

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

LBP-15-21

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

July 2, 2015

MEMORANDUM AND ORDER  
(Approving Settlement Agreement  
and Terminating Proceeding)

Pending before the Licensing Board in this 10 C.F.R. Part 2, Subpart B enforcement proceeding is an April 17, 2015 motion filed jointly by hearing requestor James Chaisson and the NRC staff asking that the Board approve a settlement agreement between the parties and, as a consequence, terminate this proceeding. See Joint Motion to Approve Settlement Agreement and Terminate Proceeding (Apr. 17, 2015) at 1 [hereinafter Joint Motion]. As the June 30, 2015 revised version of the settlement agreement indicates, the agreement would replace a July 11, 2014 enforcement order entered by the staff.<sup>1</sup> See Notification of Revised Settlement Agreement (July 1, 2015) attach. A, at 6 (Settlement Agreement Between U.S. Nuclear Regulatory Commission and James P. Chaisson (June 30, 2015)) [hereinafter Revised Settlement Agreement]. For the reasons set forth below, pursuant to 10 C.F.R. § 2.338(i), we

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<sup>1</sup> For reasons that are outlined in section II.B *infra*, the April 14, 2015 initial version of the parties' settlement agreement that was submitted with their April 17 motion was revised and resubmitted to the Board on July 1, 2015. See Notification of Revised Settlement Agreement (July 1, 2015) at 1 [hereinafter Revised Settlement Agreement Notification].

grant the parties' joint motion, approve the revised June 30, 2015 settlement agreement, a copy of which is attached to this order as appendix A, and, accordingly, terminate this case.

## I. BACKGROUND

Based on Mr. Chaisson's alleged failure to comply with certain provisions of a September 10, 2012 staff confirmatory order, the staff's July 2014 enforcement order would have, among other things, imposed significant restrictions on Mr. Chaisson's ability to engage in NRC-licensed radiographic activities. See In the Matter of James Chaisson, 79 Fed. Reg. 42,057, 42,058 (July 18, 2014); see also Mr. James Chaisson; Confirmatory Order (Effective Immediately), 77 Fed. Reg. 58,587 (Sept. 21, 2012). On August 4, 2014, Mr. Chaisson submitted a pro se hearing request challenging the staff's July 2014 enforcement order. See E-mail from James Chaisson to NRC Hearing Docket (Aug. 4, 2014). Following the August 13 establishment of this Board, see James Chaisson; Establishment [o]f Atomic Safety [a]nd Licensing Board, 79 Fed. Reg. 49,104 (Aug. 19, 2014),<sup>2</sup> the staff in its August 15 answer agreed with Mr. Chaisson that he was entitled to a hearing, see NRC Staff Answer to Request for Hearing (Aug. 15, 2014) at 1. Subsequent to an August 26 teleconference with the parties, see Tr. at 1–103, the Board issued a September 8 hearing notice and initial scheduling order granting Mr. Chaisson's hearing request, see LBP-14-11, 80 NRC 125, 128 (2014). In that order, the Board also directed the staff and Mr. Chaisson to discuss the possibility of settlement and report back to the Board regarding their efforts. See id. at 133.

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<sup>2</sup> When this Board was initially constituted, Administrative Judge Alex Karlin was appointed as Board chairman. See 79 Fed. Reg. at 49,104. Subsequently, the Board was reconstituted with Administrative Judge G. Paul Bollwerk, III, as the chairman. See James Chaisson; Notice of Atomic Safety and Licensing Board Reconstitution, 80 Fed. Reg. 10,165 (Feb. 25, 2015).

On October 10, 2014, the parties requested the appointment of a settlement judge. See Report of Consultation Between the Parties (Oct. 10, 2014) at 2; see also Licensing Board, Request for Appointment of Settlement Judge (Oct. 15, 2014) at 1 (unpublished). Acting pursuant to 10 C.F.R. § 2.338(b)(1), on October 17 the Atomic Safety and Licensing Board Panel's Chief Administrative Judge appointed Administrative Judge Paul Ryerson to act as the settlement judge in this proceeding. See Licensing Board Panel Order (Appointment of Settlement Judge) (Oct. 17, 2014) at 1 (unpublished). Thereafter, while the Board proceeded with the steps to conduct an evidentiary hearing regarding Mr. Chaisson's challenges to the staff's July 2014 enforcement order, see Licensing Board Memorandum and Order (Tentative Schedule for Evidentiary Hearing) (Mar. 31, 2015), app. A (unpublished), the parties, with the assistance of Judge Ryerson, worked to reach a mutually acceptable agreement settling this proceeding. Those efforts ultimately were fruitful, as evidenced by the above-referenced April 17, 2015 joint motion. See Joint Motion attach. A (Settlement Agreement Between U.S. Nuclear Regulatory Commission and James P. Chaisson (April 14, 2015)) [hereinafter Initial Settlement Agreement].

In mid-April 2015, in accordance with its responsibility under section 2.338(i) to review and, if appropriate, approve the parties' agreement, the Board unsuccessfully attempted on several occasions to convene a telephone conference with the parties to discuss the agreement. See Licensing Board Memorandum (Advising the Parties About Planned Teleconference) (Apr. 15, 2015) at 1–2 (unpublished); Licensing Board Memorandum and Order (Rescheduling Telephone Conference) (Apr. 21, 2015) at 1–2 (unpublished); Licensing Board Memorandum and Order (Rescheduling Prehearing Conference and Suspending Evidentiary Hearing Schedule) (Apr. 29, 2015) at 1–2 (unpublished) [hereinafter Draft Chart Issuance]. The Board also circulated to the parties for their review a draft chart that outlined the various

provisions of the settlement agreement in a way that the Board suggested Mr. Chaisson might find easier to track. See Draft Chart Issuance attach. A. The Board's proposed teleconference ultimately had to be delayed, however, because of Mr. Chaisson's unavailability.<sup>3</sup>

When a telephone conference was finally convened on June 10, the Board discussed with the parties a number of items relating to the settlement agreement, including the agreement's compliance with the requirements of section 2.338(h) regarding settlement agreement contents; the accuracy of the Board's draft chart outlining the agreement's terms that previously had been provided to the parties for their review; the differences between various provisions of the agreement and the staff's July 2014 enforcement order; and the impacts upon the agreement, if any, of recent legal difficulties encountered by Mr. Chaisson. See Tr. at 260–348. As a result of that conference, on July 1, 2015, the parties submitted a June 30 revised version of the settlement agreement for the Board's consideration, see Revised Settlement Agreement Notification at 1, which is the version we review in this decision.

## II. ANALYSIS

### A. Standards Governing the Approval of Settlement Agreements

NRC regulations, specifically section 2.338 of title 10 of the Code of Federal Regulations, encourage “[t]he fair and reasonable settlement of issues proposed for litigation” in

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<sup>3</sup> The reasons for this delay are outlined in a series of Board issuances. See Licensing Board Memorandum and Order (Requesting Staff Report Regarding Joint Settlement Agreement) at 1 (May 4, 2015) (unpublished); Licensing Board Memorandum (Acknowledging Receipt of E-Mail Message) at 1–2 (May 7, 2015) (unpublished); Licensing Board Memorandum and Order (Requesting Additional Information Regarding Mr. Chaisson's Status) (May 19, 2015) at 1–2 (unpublished); Licensing Board Memorandum and Order (Proposed Schedule for Telephone Conference and Denying NRC Staff Request to Make Enforcement Order Effective) (May 22, 2015) at 1–2 (unpublished); Licensing Board Memorandum and Order (Scheduling Teleconference and Requesting Information Regarding Settlement Agreement) (June 4, 2015) at 1 (unpublished) [hereinafter Teleconference Scheduling Order].

NRC adjudicatory proceedings, with the strictures that govern such settlements set forth in the balance of section 2.338. Thus, subsection (g) outlines the form for such settlements:

A settlement must be in the form of a proposed settlement agreement, a consent order, and a motion for its entry that includes the reasons why it should be accepted. It must be signed by the consenting parties or their authorized representatives.

10 C.F.R. § 2.338(g). In addition, subsection (h) states that a proposed settlement agreement must contain the following 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.

Id. § 2.338(h). Finally, and particularly pertinent to the Board's consideration of the parties' pending joint motion, subsection (i) describes the settlement agreement approval process:<sup>4</sup>

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<sup>4</sup> In this regard, section 5 of the revised settlement agreement also indicates that "the agreement is contingent upon approval by the Board pursuant to 10 C.F.R. § 2.203." Revised Settlement Agreement at 5. Section 2.203, which is one of the enforcement-related provisions of 10 C.F.R. Part 2, Subpart B, has the title "Settlement and compromise" and states:

At any time after the issuance of an order designating the time and place of hearing in a proceeding to modify, suspend, or revoke a license or for other action, the staff and a licensee or other person may enter into a stipulation for the settlement of the proceeding or the compromise of a civil penalty. The stipulation or compromise shall be subject to approval by the designated presiding officer or, if none has been designated, by the Chief Administrative Law Judge, according due weight to the position of the staff. The presiding officer, or if none has been designated, the Chief Administrative Law Judge, may order such adjudication of the issues as he may deem to be required in the public interest to dispose of the proceeding. If approved, the terms of the

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Following issuance of a notice of hearing, a settlement must be approved by the presiding officer . . . to be binding in the proceeding. The presiding officer . . . may order the adjudication of the issues that the presiding officer . . . finds is required in the public interest. In an enforcement proceeding under subpart B of this part, the presiding officer shall accord due weight to the position of the NRC staff when reviewing the settlement. If approved, the terms of the settlement . . . must be embodied in a decision or order. Settlements approved by a presiding officer are subject to the Commission's review in accordance with § 2.341.

Id. § 2.338(i).

And regarding section 2.338(i)'s direction that in an enforcement proceeding, such as this one, "due weight" must be given to the staff's position, the Commission's decision in the Sequoyah Fuels Corp. proceeding indicates that while the staff's position "is not itself dispositive of whether an enforcement agreement should be approved," the regulatory instruction to accord that position "due weight" nonetheless is "dispositive proof of the importance of the Staff's views." Sequoyah Fuels Corp. (Gore, Oklahoma Site), CLI-97-13, 46 NRC 195, 207 (1997). The Commission, however, also noted that "[i]n any pending proceeding [in which presiding officer approval of a settlement agreement is required], the presiding officer's approval of settlement is a matter that must give due consideration to the public interest." Id. (quoting

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<sup>4</sup>(...continued)

settlement or compromise shall be embodied in a decision or order settling and discontinuing the proceeding.

10 C.F.R. § 2.203. Section 2.203 was adopted in 1962 as part of a major revision of the Atomic Energy Commission's rules of practice, see 27 Fed. Reg. 377, 380 (Jan. 13, 1962), and, other than minor amendments in 1963 and 1971, see 28 Fed. Reg. 10,151, 10,153 (Sept. 17, 1963) (changing reference to "decision and order" in last sentence to read "decision or order"); 36 Fed. Reg. 16,894, 16,895, 16,896 (Aug. 26, 1971) (adding references to "or the compromise of a civil penalty" and "compromise" to encompass civil penalty settlements), remains essentially unchanged. It seems apparent, however, that the substantive aspects of section 2.203 were incorporated into (and so superseded by) the dictates of section 2.338(i) when that provision was adopted as part of the Commission's 2004 comprehensive Part 2 rewrite. See Changes to Adjudicatory Process; Final Rule, 69 Fed. Reg. 2182, 2225 (Jan. 14, 2004) ("Section 2.338 is a new provision that consolidates and amplifies the previous rules pertaining to settlement (10 CFR 2.203, 2.759, 2.1241).").

Sequoyah Fuels Corp. (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71 (1994)) (footnote omitted). The Commission then went on to explain that this “public interest” inquiry requires the presiding officer 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.

Id. at 209 (footnote omitted).

With these standards in mind, we undertake our section 2.338(i) review of the parties’ June 30 revised settlement agreement, the terms of which are described in section II.B below.

#### B. NRC Staff/Chaisson Settlement Agreement

As we noted in section I above, the June 2015 revised settlement agreement between the parties is the culmination of a staff enforcement process that included a September 2012 confirmatory order, which itself was the product of mediation between Mr. Chaisson and the staff,<sup>5</sup> as well as a July 2014 order that reflected the staff’s apparent conviction that Mr. Chaisson had failed to abide by the terms of the September 2012 confirmatory order. The September 2012 and July 2014 enforcement orders each contained provisions that imposed three sets of requirements:

(1) for a specified period of time, a ban on Mr. Chaisson engaging in NRC-licensed activities, including performing, supervising, or assisting in any industrial radiographic operations for an NRC licensee or for an Agreement State

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<sup>5</sup> Following the entry of an initial enforcement order by the staff on May 15, 2012, a mediation process was instituted at Mr. Chaisson’s request, which resulted in the September 2012 confirmatory order. See 77 Fed. Reg. at 58,587; see also Mr. James Chaisson; Order Prohibiting Involvement in NRC-Licensed Activities, 77 Fed. Reg. 30,332 (May 22, 2012).

licensee with authority to conduct operations in NRC jurisdiction pursuant to the reciprocity provisions of 10 C.F.R. § 150.20;

(2) for a specified period of time following the ban in paragraph (1) above, limited work restrictions that (a) required Mr. Chaisson to notify NRC Region IV each time he accepted employment with an NRC licensee or would be working in an NRC jurisdiction for an Agreement State licensee under reciprocity, (b) prohibited Mr. Chaisson from working in an NRC jurisdiction for an NRC licensee or an Agreement State licensee in a supervisory position, including as an area supervisor or as a radiation safety officer (RSO), and (c) required Mr. Chaisson prior to starting work to provide a copy of the enforcement order to an NRC licensee or an Agreement State licensee working in an NRC jurisdiction under reciprocity; and

(3) additional mandates regarding (a) "individual training," which included completing a forty-hour formal RSO training course, and (b) "staff review," which required Mr. Chaisson to provide to NRC Region IV an article or presentation demonstrating his understanding of the importance of NRC regulations related to public health and safety or the common defense and security.

Compare 77 Fed. Reg. at 58,587, with 79 Fed. Reg. at 42,058–60. The June 30 revised settlement agreement presented for the Board's approval contains essentially these same elements, although the details vary somewhat from the staff's previous orders, as was discussed during the June 10 teleconference and is outlined below.

So, for instance, the revised settlement agreement, like the September 2012 and July 2014 orders, states that Mr. Chaisson is precluded from performing work as a radiographer for an NRC licensee or for an Agreement State licensee while in NRC jurisdiction under reciprocity.



The revised settlement agreement, however, would apply this ban only until Mr. Chaisson has complied with the agreement's requirements concerning individual training and staff review, provisions which are similar to terms in the September 2012 and July 2014 orders, along with an added "shadowing" requirement.<sup>6</sup> Also, under the revised agreement, Mr. Chaisson may work in an NRC-regulated jurisdiction as a radiographer's assistant -- something he could not do under the September 2012 and July 2014 orders -- so long as he is under the supervision of a certified radiographer.<sup>7</sup> See Revised Settlement Agreement at 1; see also Tr. at 278–79.

Further, with respect to the individual training prerequisite to Mr. Chaisson being able to work again as a radiographer, as was the case with the staff's September 2012 and July 2014 orders, Mr. Chaisson must take a forty-hour course designed for qualifying as an RSO that must include (either as part of, or separately from, the formal RSO course) training regarding the security requirements of 10 C.F.R. Part 37 associated with Category 1 and 2 quantities of radioactive materials.<sup>8</sup> See Revised Settlement Agreement at 2; see also Tr. at 287–92. The

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<sup>6</sup> The revised agreement does not provide any deadline by which Mr. Chaisson must comply with these individual training, staff review, and shadowing requirements. This seems logical because, as a prerequisite to the staff's removing the ban on Mr. Chaisson working as a radiographer in NRC jurisdiction or for an Agreement State licensee while in NRC jurisdiction under reciprocity, these terms provide an ample compliance incentive for Mr. Chaisson. See Tr. at 279–81.

<sup>7</sup> As was explained during the June 10 teleconference, see Tr. at 279, under the terms of the revised settlement agreement Mr. Chaisson will be able to act in accordance with the 10 C.F.R. Part 34 definition of a "Radiographer's Assistant," which "means any individual who under the direct supervision of a radiographer, uses radiographic exposure devices, sealed sources or related handling tools, or radiation survey instruments in industrial radiography." 10 C.F.R. § 34.3.

<sup>8</sup> During the June 10 teleconference, the staff indicated that an additional requirement for a 40-hour training course on non-destructive testing (NDT) per 10 C.F.R. § 34.43 that was part of both the 2012 and 2014 orders was dropped. The staff explained that it took this action because, in the interim, Mr. Chaisson had obtained a radiography card from the State of Oklahoma, which the staff deemed sufficiently similar to the previously-required NDT training to show Mr. Chaisson's technical competency in this area. See Tr. at 287–88.

revised agreement's staff review prerequisite provision states that Mr. Chaisson must meet with staff personnel at the NRC's Arlington, Texas Region IV office, or another agreed location, to review and discuss the importance of compliance with NRC regulations, with an emphasis on industrial radiography.<sup>9</sup> See Revised Settlement Agreement at 1; see also Tr. at 281–82.

Finally, the revised agreement declares that as a prerequisite to regaining radiographer status, Mr. Chaisson also must “shadow’ and observe” an NRC-pre-approved RSO for a minimum of forty hours as the RSO performs radiation safety program oversight duties for a radiography company.<sup>10</sup> Revised Settlement Agreement at 2. This includes shadowing the RSO as he/she performs three particular types of audits: (1) audits of at least three different crews performing work activities in the field at a temporary job site; (2) an audit of a storage location for

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<sup>9</sup> Under the settlement agreement, the NRC's Region IV office is to be the default location for this single meeting between the staff and Mr. Chaisson, see Revised Settlement Agreement at 1, but when questioned during the June 10 teleconference the parties indicated that it is their expectation that the meeting will take place in the vicinity of Mr. Chaisson's home in Utah. See Tr. at 282–85. During the telephone conference, the staff also stated that while it contemplates that the parties will exchange a pre-meeting agenda to provide a structure for their discussions, this session is intended to allow for a somewhat more open discourse as compared to the format of the meeting required under the staff's July 2014 order. See Tr. at 282. Mr. Chaisson indicated that he preferred a face-to-face meeting with the staff to what he was required to do under the September 2012 confirmatory order because that would avoid any issues about document receipt (as arose under the September 2012 order's requirement that he provide the staff with an article). See Tr. at 285–86.

<sup>10</sup> Although the settlement agreement does not say anything specific about the timing of a request by Mr. Chaisson for pre-approval, during the June 10 teleconference the parties indicated it was their expectation that a request made a week prior to the time Mr. Chaisson wished to engage in shadowing would allow the staff to provide him with a timely response concerning the acceptability of the designated RSO. See Tr. at 292–93, 295. Additionally, the staff stated that the RSO being shadowed did not necessarily have to be based in a state under NRC jurisdiction, whose RSO certification would have been granted under NRC regulations, but could be someone who was certified as an RSO through an Agreement State process. See Tr. at 294–95.

radiography cameras and the security systems at the storage location; and (3) an audit of a security system for radiography trucks.<sup>11</sup> See id.; see also Tr. at 292–304.

Besides imposing a ban on working as a radiographer and the three prerequisites for removing that prohibition, the revised agreement, like the 2012 and 2014 staff orders, also describes several limited work restrictions. Thus, until April 18, 2018,<sup>12</sup> Mr. Chaisson (1) must notify NRC Region IV each time he accepts employment with an NRC licensee or would be working in an NRC jurisdiction for an Agreement State licensee; (2) cannot work in an NRC jurisdiction for an NRC licensee or for an Agreement State licensee (a) in a supervisory position, including as an area supervisor, (b) as an RSO, or (c) in a provision not found in the September 2012 or July 2014 orders, as an industrial radiographic operations instructor;<sup>13</sup> and (3) prior to

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<sup>11</sup> During the June 10 teleconference, the staff advised the Board that these three specified audit activities correspond to areas that were the subject of staff concern relative to Mr. Chaisson's past activities that caused him to run afoul of NRC restrictions. See Tr. at 296–97. For his part, Mr. Chaisson indicated that he did not anticipate any issues with being able to shadow an RSO while auditing these activities as they are items that are audited on a monthly basis in most instances. See Tr. at 298. Additionally, the staff stated that an audit condition such as this one has been used previously with productive results and that, while the agreement does not contain any time frame within which Mr. Chaisson must notify the staff that he has completed this auditing requirement, it once again would be in his interest to act promptly since this is a prerequisite to having the staff lift the ban on Mr. Chaisson serving as a radiographer. See Tr. at 302–03; see also supra note 6.

<sup>12</sup> Under the initial version of the settlement agreement, the date governing the limited work restriction provisions would have been three years from April 14, 2015, the effective date of the agreement. See Initial Settlement Agreement at 1, 6. Acting on the Board's post-teleconference request to consider what the date governing these restrictions should be under the revised settlement agreement, see Licensing Board Memorandum (Regarding Effective Date for Provisions of Revised Settlement Agreement) (June 11, 2015) at 1–2 (unpublished), the parties indicated in the June 30 revised settlement agreement that the date governing the limited work restriction provisions would remain April 14, 2015. See Revised Settlement Agreement at 3 (limited work restrictions continue until April 18, 2018).

<sup>13</sup> Relative to this restriction, the April 2015 original agreement referenced an "instructor of industrial radiographic operations," Initial Settlement Agreement at 4, which the staff declared during the June 10 teleconference was added to the agreement as a result of a question from a potential employer about whether, under the prohibited positions language of the staff's July  
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starting work, must provide a copy of the settlement agreement to an NRC licensee or to an Agreement State licensee working in NRC jurisdiction. See Revised Settlement Agreement at 3–4; see also Tr. at 308–22. Finally, in an apparent first-of-a-kind provision, see Tr. at 307, the agreement states that for three years after the settlement agreement’s date, Mr. Chaisson is to provide a report to the staff each quarter summarizing his engagement in NRC-licensed activities, which is to include an overview of the activities completed during the last quarter and

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<sup>13</sup>(...continued)

2014 order, Mr. Chaisson could act as a trainer. See Tr. at 309–10. Mr. Chaisson, however, advised the Board and the staff that a radiography company with which he recently had been in contact about possible work had, after reading the initial April 2015 settlement agreement, advised him that this clause might be an impediment to Mr. Chaisson being offered work. According to Mr. Chaisson, the problem involved the designation in some jurisdictions of a radiographer as a “trainer” to the degree that, based on experience, the individual is qualified to provide in-the-field instruction to level 1, or “greenhorn,” radiologists. See Tr. at 310–13. The staff responded with an offer to redraft this portion of the agreement to clarify the language and so alleviate this issue in a way that was acceptable to Mr. Chaisson and committed to the Board that it would provide a revised agreement, executed by both parties and containing the amended language. See Tr. at 314–21. As a consequence, the June 30 revised agreement has the following additional proviso:

This restriction does not apply to the circumstances where Mr. Chaisson performs work as a radiographer (following successful completion of the requirement of Section 1 of this Settlement Agreement) with the support of a radiographer’s assistant. Nothing in this settlement agreement prohibits an Agreement State licensee from listing Mr. Chaisson as “trainer” on its license, subject to the requirements of the Agreement State.

Revised Settlement Agreement at 4.

a write-up regarding his known or intended work projections/locations for the next quarter.<sup>14</sup>

See Revised Settlement Agreement at 3; see also Tr. at 304–08.

In addition to the above-described work restrictions, the revised settlement agreement also has a penalty clause and a provision regarding requests for extension, relaxation, or rescission of any of the settlement agreement's provisions. Under the terms of the penalty clause, if Mr. Chaisson does not abide by any of the agreement's requirements, fails to submit a timely request for an extension/relaxation/rescission of those requirements, or does not comply with NRC requirements/regulations/license conditions while engaged in NRC-licensed activities as defined in the agreement, the staff may issue an order prohibiting him from engaging in NRC-licensed activities for a period up to a lifetime ban.<sup>15</sup> See Revised Settlement Agreement

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<sup>14</sup> In this regard, the agreement defines "NRC-licensed activities" as including "those activities that are conducted pursuant to a specific or general license issued by the NRC (e.g., industrial radiographic operations conducted pursuant to 10 C.F.R. Part 34), and activities of Agreement State licensees conducted pursuant to the authority granted by 10 C.F.R. § 150.20." Revised Settlement Agreement at 3. Additionally, although the revised settlement agreement does not specify a time for Mr. Chaisson's first quarterly report, the parties indicated that, assuming a Board ruling on their joint motion on or about June 30, 2015, the first quarterly report, covering Mr. Chaisson's activities during July-September 2015 and his planned activities during October-December 2015, would be due to the staff via e-mail on or before September 30, 2015. See Tr. at 304–05. We would assume that the Board's issuance of this decision contemporaneously with the July 1 filing of the parties' June 30 revised agreement would fulfill this condition, making Mr. Chaisson's first report due on September 30, 2015.

<sup>15</sup> In the initial agreement, there was no provision explicitly defining the period during which this provision could be employed by the staff as the basis for an enforcement order directed to Mr. Chaisson. See Initial Settlement Agreement at 3. During the June 10 teleconference, in response to a Board question about the duration of this provision, the staff indicated that this section's effective period would be either the three-year restriction period applicable to the limited work restrictions under section 2 of the agreement or the time required for Mr. Chaisson to complete the requirements to get out from under the work restriction in the agreement's section 1, whichever comes later. See Tr. at 323. The staff also agreed to incorporate language to this effect into the revised agreement that the parties already had committed to prepare to clarify the scope of the initial agreement's three-year restriction on Mr. Chaisson acting as an industrial radiographic operations trainer. See Tr. at 324–25; see also supra note 13. Thus, the revised agreement now states that the penalty provision "shall remain in effect until completion of the requirements in Section 1 of this Settlement Agreement, or until  
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at 4–5. Further, the extension/relaxation/rescission clause states that while the staff (more specifically, the Director of the NRC Office of Enforcement) may relax or rescind any of the settlement agreement’s provisions upon a showing of good cause by Mr. Chaisson, such an extension/relaxation/rescission request by Mr. Chaisson (1) must be submitted, in writing, by mail or e-mail prior to the expiration of any of the applicable deadlines under the agreement;<sup>16</sup> and (2) will not be considered by the staff if submitted after a deadline has expired.<sup>17</sup> See id. at 5.

C. Board Determination

1. Settlement Agreement’s Content

In applying the standards set forth in section II.A above to determine the efficacy of the revised settlement agreement described in section II.B,<sup>18</sup> we look first to section 2.338(h), which outlines the specific matters the agreement must address. In response to Board questions

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<sup>15</sup>(...continued)  
the expiration of the restrictions in Section 2 of this Settlement Agreement, whichever is later.” Revised Settlement Agreement at 5.

<sup>16</sup> The revised settlement agreement contains a provision that provides Mr. Chaisson with detailed correspondence and telephone contact information for the NRC staff. See id. at 5–6.

<sup>17</sup> Relative to extending any of the deadlines in the settlement agreement, Mr. Chaisson acknowledged during the teleconference that this provision makes it clear that he must, in all instances, request permission prior to the deadline rather than seeking post-deadline forgiveness. See Tr. at 326-27. At the same time, while the revised agreement states that the staff “will” not consider any extension/relaxation/recision request submitted after a deadline expires, Revised Settlement Agreement at 5, we presume that the staff retains the discretion to waive a deadline in the event of some extraordinary event, such as a health issue, that precludes Mr. Chaisson from submitting the request on a timely basis.

<sup>18</sup> Although medical issues previously required Mr. Chaisson to take pain medication, he assured the Board during the June 10 teleconference that he was no longer on that medication and was in control of his faculties, both at the time the settlement agreement was signed and during the teleconference. See Tr. at 265–67. Additionally, Mr. Chaisson indicated that he had read the April 2015 agreement before signing it and was fully aware of its contents. See Tr. at 271.

during the June 10 teleconference, the parties indicated that those requirements were fulfilled as follows:<sup>19</sup>

(1) The “admission of all jurisdictional facts” required by section 2.338(h)(1) is found in the “whereas” clauses in the introduction to the agreement. See Tr. at 273; see also Revised Settlement Agreement at 1.

(2) The “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” mandated by section 2.338(h)(2) is found in section 7 of the agreement, entitled “Waiver.” See Tr. at 274; see also Revised Settlement Agreement at 6.

(3) The “statement that the order has the same force and effect as an order made after full hearing” needed under section 2.338(h)(3) is found in section 5 of the agreement, entitled “Board Approval.” See Tr. at 274; see also Revised Settlement Agreement at 5.

(4) The “statement that matters identified in the agreement, required to be adjudicated have been resolved by the proposed settlement agreement and consent order” required by section 2.338(h)(4) is also found in section 5 of the agreement, entitled “Board Approval.” See Tr. at 274; see also Revised Settlement Agreement at 5.

After reviewing those provisions of the revised settlement agreement, we conclude that the above-referenced sections fulfill the requirements of section 2.338(h).

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<sup>19</sup> While the staff provided the specific references to the settlement agreement provisions that it asserted fulfilled the requirements of section 2.338(h), Mr. Chaisson stated that he agreed with the staff’s designations. See Tr. at 274–75.

## 2. Settlement Agreement and the Public Interest

We turn next to the four standards outlined in the Commission's Sequoyah Fuels Corp. decision that a licensing board is to consider in evaluating the "public interest" when reviewing a settlement agreement under section 2.338(i). Regarding the first of those criteria, i.e., the risks and benefits of further litigation for both parties, as is pertinent in this instance, in assessing this factor in Sequoyah Fuels Corp., CLI-97-13, 46 NRC at 209, the Commission focused on "(1) the likelihood (or uncertainty) of success at trial, (2) the range of possible recovery . . . , and (3) the complexity, length, and expense of continued litigation." Looking to those matters here, even putting aside Mr. Chaisson's pro se status, based on the information (albeit non-evidentiary information) in the record of this proceeding regarding the claims against him, Mr. Chaisson's challenge to the staff's July 2014 order faced an uphill battle. At the same time, over the staff's objection, the Board ruled that during the hearing evidence could be presented regarding the potentially significant questions of (1) whether the September 2012 confirmatory order accurately reflected the parties' agreement; and (2) the validity of the staff's previous findings of "deliberate misconduct" as a basis for the staff's July 2014 enforcement order. See LBP-14-11, 80 NRC at 131-32. Thus, both sides had considerable litigation risks, making a settlement a reasonable choice for both. Further, regarding possible "recovery," as compared to the previous staff enforcement orders, the revised settlement agreement does contain some provisions that provide Mr. Chaisson with a more flexible compliance opportunity. But the revised agreement also retains the major requirements of the previous staff orders and, in fact, adds some new strictures. Again, this suggests that the settlement was a reasonable outcome for both parties, particularly given that each faced the expense of a possible two-day evidentiary hearing requiring, in the staff's case, travel to Utah by counsel and witnesses. In sum, the parties' individual interests were well served by the settlement agreement, which avoids the litigation



risks posed by this proceeding while affording both the benefit of a set of mutually agreeable restrictions on Mr. Chaisson's radiographic activities for an appropriate period of time.

Under the second Sequoyah Fuels Corp. element, the Board must consider whether the terms of the settlement can be effectively implemented and enforced. Based on our review of the revised settlement agreement's provisions and the parties' answers to the Board's questions during the June 10 teleconference, the revised settlement satisfies this factor as well, as is demonstrated in the parties' responses regarding the agreement's individual training, staff review, shadowing, quarterly reporting, and penalty clause provisions. See supra notes 8–17.

The third Sequoyah Fuels Corp. component is whether the settlement jeopardizes the public health and safety. Our review of the revised agreement's provisions and the parties' responses to our June 10 teleconference questions leads us to conclude that the agreement is fully consistent with the agency's mission of protecting the public health and safety. The agreement retains the requirements found in the September 2012 and July 2014 enforcement orders that for a specified period -- now three years -- Mr. Chaisson must (1) notify the staff promptly when he accepts employment with an NRC licensee; (2) notify the staff prior to working in an NRC jurisdiction with an Agreement State licensee; and (3) prior to starting employment, provide a copy of the revised settlement agreement to both NRC licensees and Agreement State licensees acting under 10 C.F.R. § 150.20. To be sure, the restriction in the prior enforcement orders on Mr. Chaisson "assisting" in radiographic operations in NRC jurisdiction has been removed to permit him to act as a radiographer's assistant in NRC jurisdiction. But during that activity Mr. Chaisson must be under the supervision of a certified radiographer. Moreover, Mr. Chaisson cannot act as an unsupervised radiographer until he fulfills the staff review, individual training, and shadowing requirements in the revised settlement agreement and, in any event, cannot perform in a supervisory, RSO, or industrial radiographic

operations instructor position until mid-April 2018. Additionally, the staff has tailored the agreement's shadowing condition to address the particular issues that precipitated the staff's initiation of an enforcement action against Mr. Chaisson. Further, the staff has imposed a new quarterly reporting requirement that will permit the staff to monitor Mr. Chaisson's radiographic activities on a regular basis through mid-April 2018. We thus find nothing in the agreement that is inconsistent with the staff's responsibility to see that, in instances when Mr. Chaisson is performing radiographic operations, the public health and safety is not jeopardized.<sup>20</sup>

The final Sequoyah Fuels Corp. standard concerns whether the settlement approval process deprives interested parties of meaningful participation. We note initially that, in contrast to the Sequoyah Fuels Corp. proceeding, this is not an instance when other intervenors or interested participants have come forward to assert that they might be impacted by the terms of the revised settlement agreement. See Sequoyah Fuels Corp., CLI-97-13, 46 NRC at 222-23. Despite the Federal Register notice indicating that a hearing request could be submitted by "any other person adversely affected" by the staff's July 2014 enforcement order, 79 Fed. Reg. at 42,060, the only participant in this proceeding is Mr. Chaisson, who fully supports the Board's approval of the revised settlement agreement. Accordingly, our approval of the revised settlement agreement will not deprive any interested party of meaningful participation in this proceeding.

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<sup>20</sup> Also regarding this health and safety finding, as was discussed during the June 10 teleconference, see Tr. at 327-37, beginning in mid-May 2015 Mr. Chaisson was briefly incarcerated as a result of a state misdemeanor criminal conviction. The staff maintained that while such a circumstance, and the need to report it, would be a matter of concern under the disclosure requirements of the regulatorily-mandated personnel program of any NRC or Agreement State licensee with whom Mr. Chaisson might be employed, the subject offense has no relevance to the Board's section 2.338(i) approval finding regarding the parties' settlement agreement. We endorse the staff's position, given the infraction has neither any relationship to any radiographic activities that Mr. Chaisson already has performed nor to any that he might perform in the future.

We thus conclude that all of the four Sequoyah Fuels Corp. “public interest” factors support approval of the revised settlement agreement.

### 3. Board Approval Determination

Giving due weight to the staff’s position that the June 30, 2015 revised settlement agreement should be approved pursuant to the dictates of section 2.338(i), and finding that (1) the revised agreement’s contents comply with the requirements of section 2.338(h); and (2) pursuant to section 2.338(i), the public interest does not require any issues to be adjudicated to dispose of this proceeding, the Board determines that the parties’ revised settlement agreement should be approved and that this proceeding should be terminated.<sup>21</sup>

Additionally, as an aid to the parties (and particularly Mr. Chaisson) in carrying out the terms of the revised settlement agreement, we attach as appendix B to this memorandum and order the previously-described chart, see supra pp. 3–4, that outlines the revised agreement’s provisions.

## III. CONCLUSION

Based on our review of the terms of the June 30, 2015 revised settlement agreement provided by James Chaisson and the staff, and after giving due weight to the position of the staff regarding the revised settlement agreement, we conclude that the revised settlement

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<sup>21</sup> During the June 10 telephone conference we observed that, absent some future directive from the Commission, a Board ruling approving the revised settlement agreement and terminating this proceeding would also terminate the Board’s jurisdiction over the parties’ agreement. See Tr. at 342–44. Nonetheless, if in the future, after seeking a reasonable accommodation with the staff, Mr. Chaisson has a concern about how some aspect of the revised settlement agreement is being implemented or enforced, he can bring that concern to the attention of the Commission, which retains supervisory authority over the parties’ revised agreement. See E. Testing & Inspection, Inc., LBP-96-11, 43 NRC 279, 282 n.1 (1996) (citing Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), CLI-80-12, 11 NRC 514, 517 (1980)).

agreement both meets the content requirements of section 2.338(h) and is consistent with the public interest. Therefore, in accordance with section 2.338(i), we approve the revised agreement and terminate this proceeding.

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For the foregoing reasons, it is this second day of July 2015, ORDERED, that

1. The April 17, 2015 joint motion of James Chaisson and the staff is granted and we approve the parties' June 30, 2015 revised settlement agreement and terminate this proceeding, with prejudice.<sup>22</sup>
2. In accordance with 10 C.F.R. §§ 2.338(i), 2.341(a)(2), this issuance will constitute a final decision of the Commission 120 days from the date of issuance, i.e., on Friday, October 30, 2015, unless a petition for review is filed in accordance with 10 C.F.R. § 2.341 or the Commission directs otherwise.<sup>23</sup> Any party wishing to file a petition for review on the grounds specified in 10 C.F.R. § 2.341(b)(4) must do so within twenty-five (25) days after service of this issuance. The filing of a petition for review is mandatory for a party to have

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<sup>22</sup> As was noted by the staff during the June 10 teleconference, see Tr. at 338, the "with prejudice" designation requested by the parties, see Revised Settlement Agreement at 5, means that the staff would effectively be barred from filing any new enforcement claim against Mr. Chaisson based on the subject matter that was the focus of the 2012 and 2014 enforcement orders. See Yankee Atomic Elec. Co. (Yankee Nuclear Power Station), LBP-99-27, 50 NRC 45, 50 (1999) (with prejudice termination bars "the relitigation of similar issues").

<sup>23</sup> As is the case with the federal courts, our authority under section 2.338(i) is to approve or reject a settlement agreement, and so we cannot amend the agreement without the consent of the parties. See E. Testing, LBP-96-11, 43 NRC at 282 n.1 (citing cases). That circumstance, along with the parties' joint motion requesting Board approval of their agreement, suggests that, as a practical matter, no petition for review is likely to be filed challenging this issuance. Nevertheless, by its terms section 2.341 affords either party the opportunity to contest any portion of this decision, and so we provide notice regarding the section 2.341 review process.

exhausted its administrative remedies before seeking judicial review. Within twenty-five (25) days after service of a petition for review, parties to the proceeding may file an answer supporting or opposing Commission review. Any petition for review and any answer shall conform to the requirements of 10 C.F.R. § 2.341(b)(2)-(3).

THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>24</sup>

***/RA/***

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G. Paul Bollwerk, III, Chairman  
ADMINISTRATIVE JUDGE

***/RA/***

---

Michael M. Gibson  
ADMINISTRATIVE JUDGE

***/RA/***

---

Gary S. Arnold  
ADMINISTRATIVE JUDGE

Rockville, Maryland

July 2, 2015

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<sup>24</sup> 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.

## APPENDIX A

**SETTLEMENT AGREEMENT BETWEEN  
U.S. NUCLEAR REGULATORY COMMISSION  
AND  
JAMES P. CHAISSON**

*Whereas*, on July 11, 2014, the U.S. Nuclear Regulatory Commission (NRC) Staff issued an Order (Prohibiting Involvement in NRC-licensed Activities) banning Mr. James P.

Chaisson from engaging in any licensed activities for a period of three years;

*Whereas*, on August 4, 2014, Mr. James P. Chaisson filed a request for hearing challenging the NRC Staff's issuance of the July Order;

*Whereas*, both the NRC Staff and Mr. Chaisson wish to enter into a settlement agreement to resolve the matters referenced by rescinding the July Order and withdrawing the request for hearing;

*Therefore*, on this 30<sup>th</sup> date of June, 2015, the NRC Staff and Mr. James Chaisson agree to the following terms and conditions:

**1. Work Restriction (Contingent on Completion of Certain Requirements)**

- a. Mr. Chaisson may continue to perform work as a radiographer's assistant. However, Mr. Chaisson is prohibited from performing work as a radiographer while in NRC jurisdiction (*i.e.*, Mr. Chaisson must always be under the supervision of a certified radiographer) until he successfully completes the following requirements:

- i. Mr. Chaisson shall meet, in person, with NRC Staff representatives to review and discuss the importance of compliance with NRC regulations with an emphasis on industrial radiography. The location of this meeting shall be the Region IV office in Arlington, Texas, or at an alternate location agreed to by Mr. Chaisson and the NRC Staff. The meeting will be held on a mutually agreed upon date.

- ii. Mr. Chaisson must complete a 40-hour formal training course designed for qualifying radiation safety officers, or demonstrate that he has done so within the past 18 months from the date of this Settlement Agreement. The course must include training on the security requirements of Title 10 Code of Federal Regulations (C.F.R.) Part 37, "Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material." If the radiation safety officer training course does not include instruction on NRC security requirements, Mr. Chaisson must attend a separate course on the requirements of 10 C.F.R. Part 37. Within 10 days of completion of the training course(s), Mr. Chaisson shall provide a copy of the course completion certificates, or similar proof of attendance, by mail to the Director, Division of Nuclear Materials Safety, NRC Region IV.
- iii. Mr. Chaisson must "shadow" and observe a radiation safety officer (RSO) for a minimum of 40 hours as the RSO performs his oversight of the radiation safety program for a radiography company. Prior to shadowing an RSO, Mr. Chaisson must request and receive NRC approval of the RSO he proposes to observe. Mr. Chaisson must send his request by e-mail [EA-14-222@nrc.gov] or by mail to the Director, Division of Nuclear Materials Safety, NRC Region IV. At a minimum, Mr. Chaisson's observations of the RSO must include conducting audits of: (1) at least three different crews performing work activities in the field at a temporary jobsite; (2) a storage location for radiography cameras and the security systems at the storage location; and (3) a security system for radiography trucks. Upon completion of the observations listed above, Mr. Chaisson must notify the Director, Division of Nuclear Materials Safety, NRC



Region IV, by e-mail or in writing, of the dates that the shadowing observations occurred as well as the details of the observations.

## **2. Limited Work Restrictions**

a. The following restrictions shall persist from the date of this settlement agreement until April 14, 2018:

- i. Mr. Chaisson shall contact NRC Region IV, via e-mail [EA-14-222@nrc.gov] once per quarter regarding his engagement in NRC-licensed activities and provide a brief summary of these activities. The summary shall include an overview of activities completed within the previous quarter and identification of known or intended work projections and locations for the next quarter. NRC-licensed activities include those activities that are conducted pursuant to a specific or general license issued by the NRC (e.g., industrial radiographic operations conducted pursuant to 10 C.F.R. Part 34), and activities of Agreement State licensees conducted pursuant to the authority granted by 10 C.F.R. § 150.20.
- ii. Mr. Chaisson shall notify the Director, Division of Nuclear Materials Safety, NRC Region IV, via e-mail [EA-14-222@nrc.gov], of any employment with an NRC licensee, within 3 days of each acceptance of employment with each NRC licensee.
- iii. Mr. Chaisson shall notify the Director, Division of Nuclear Materials Safety, NRC Region IV, via e-mail [EA-14-222@nrc.gov], prior to working in NRC jurisdiction during employment with an Agreement State licensee that provides notification to the NRC of its intent to perform work in NRC jurisdiction. Mr. Chaisson's notification must be separate and apart from the notification provided by the agreement state licensee, and must

include the dates and specific location where Mr. Chaisson will be conducting NRC-licensed activities. The notification must be made at least 3 days prior to working in NRC jurisdiction.

- iv. Mr. Chaisson must provide, at least 3 days prior to starting work with any NRC licensee, a copy of this settlement agreement to the licensee. This includes Agreement State licensees who conduct activities pursuant to the authority granted by 10 C.F.R. § 150.20.
- v. Mr. Chaisson is prohibited from working for any NRC licensee (or an Agreement State licensee performing work in NRC jurisdiction under reciprocity) while in NRC jurisdiction in the following capacities:
  - 1. Manager, Area Supervisor, any other position providing supervision or oversight of industrial radiographic operations;
  - 2. Radiation Safety Officer; and
  - 3. Instructor of industrial radiographic operations.

This restriction does not apply to the circumstance where Mr. Chaisson performs work as a radiographer (following the successful completion of the requirements in Section 1 of this Settlement Agreement) with the support of a radiographer's assistant. Nothing in this settlement agreement prohibits an Agreement State licensee from listing Mr. Chaisson as a "trainer" on its license, subject to the requirements of the Agreement State.

### **3. Penalties**

- a. If Mr. Chaisson fails to abide by the requirements listed above (or submit a timely request for an extension, relaxation, or rescission of these requirements), or otherwise fails to comply with NRC requirements, regulations, or license conditions while engaged in NRC-licensed activities (as defined in section 2.a.i

above), the NRC may issue an order prohibiting him from engaging in all NRC-licensed activities for a period up to a lifetime ban. This provision shall remain in effect until completion of the requirements in Section 1 of this Settlement Agreement, or until the expiration of the restrictions in Section 2 of this Settlement Agreement, whichever is later.

**4. Requests for Extension, Relaxation, and Rescission**

- a. The Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, may relax or rescind any provisions of this settlement agreement upon a showing of good cause by Mr. Chaisson. Mr. Chaisson must send any relaxation or rescission requests, in writing, to the Director, Office of Enforcement, Washington, DC 20555, or by e-mail [EA-14-222@nrc.gov] prior to the expiration of a deadline listed above. The NRC Staff will not consider any requests for extension, relaxation, or rescission of any requirements submitted after the expiration of a deadline.

**5. Board Approval**

- a. The parties will submit this Settlement Agreement to the Atomic Safety and Licensing Board Panel assigned to this proceeding with a joint motion requesting approval of the settlement and termination of the proceeding with prejudice based on the resolution of matters in this Settlement Agreement. This Settlement Agreement will become effective upon its execution by both parties; however, the agreement is contingent upon approval by the Board pursuant to 10 C.F.R. § 2.203. Upon approval by the Board, this Settlement Agreement will have the same force and effect as an Order made after a full hearing.

**6. Correspondence and Telephone Contact with NRC**

- a. All written notifications required in this settlement agreement shall be addressed and mailed to the Director, Division of Nuclear Materials Safety, U.S. Nuclear



Regulatory Commission, Region IV, 1600 E. Lamar Blvd., Arlington, Texas  
76011-4511. Telephone contact with the Director, Division of Nuclear Materials  
Safety must be made by calling 817-200-1106. E-mail contact with the NRC  
should be sent to: EA-14-222@nrc.gov. Facsimile contact should be sent to 817-  
200-1188.

**7. Waiver**

- a. The parties agree to waive any and all rights to challenge, contest, or seek  
judicial review of the validity of the Board Order entered into in accordance with  
this Settlement Agreement.

**8. Rescission of July 18, 2014 Order**

- a. In consideration of the above, complete with the agreement and signature of Mr.  
Chaisson, the NRC Staff agrees to withdraw the July 18, 2014 enforcement  
order.

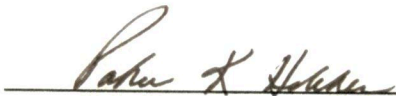
IN WITNESS WHEREOF, the parties have executed this agreement as of the last date written  
below.



James P. Chaisson

6-29-15

Date



Patricia K. Holahan  
Director, Office of Enforcement  
U.S. Nuclear Regulatory Commission

6-30-15

Date

## APPENDIX B

Summary of June 30, 2015 NRC Staff/James Chaisson Settlement Agreement Terms

1. Work Restriction Pending Completion of Certain Requirements. 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:

a. Meeting with NRC Staff Regarding Compliance with NRC Regulations: 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.

b. Training: 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 December 30, 2013)) that includes training on security requirements in 10 C.F.R. Part 37.

If the RSO course does not include NRC security requirements instruction, Mr. Chaisson must attend a separate course on Part 37 requirements.

Post-training Notification Requirement: 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).

c. Observation: 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.

Observation Pre-approval Requirement: 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).

Post-observation Notification Requirement: 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.

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 June 30, 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.

This restriction does not apply to the circumstances where Mr. Chaisson performs work as a radiographer (following successful completion of the requirements in section 1 above) with the support of a radiographer's assistant. Nothing in the settlement agreement prohibits an Agreement State licensee from listing Mr. Chaisson as "trainer" on its license, subject to the requirements of the Agreement State.

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. This provision shall remain in effect until completion of the requirements in section 1 above, or until the expiration of the restrictions in section 2 above, whichever is later.

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

In the Matter of	)	
	)	
Mr. James Chaisson	)	IA-14-025-EA
	)	
(Enforcement Action)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Approving Settlement Agreement and Terminating Proceeding)** have been served upon the following persons by Electronic Information Exchange or via Electronic Mail where indicated by an asterisk.

U.S. Nuclear Regulatory Commission.  
Atomic Safety and Licensing Board Panel  
Mail Stop: T-3F23  
Washington, DC 20555-0001

G. Paul Bollwerk, III, Chair  
Administrative Judge  
E-mail: [paul.bollwerk@nrc.gov](mailto:paul.bollwerk@nrc.gov)

Dr. Gary S. Arnold  
Administrative Judge  
E-mail: [gary.arnold@nrc.gov](mailto:gary.arnold@nrc.gov)

Michael M. Gibson  
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James Chaisson\*  
E-mail: [xrayjames01@yahoo.com](mailto:xrayjames01@yahoo.com)

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

Dated at Rockville, Maryland,  
this 2<sup>nd</sup> day of July, 2015