

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	Docket No. 03039133
APINDE Inc.)	License No. 47-35507-01
Huntington, West Virginia)	EA-19-090

ORDER SUSPENDING LICENSE
(EFFECTIVE IMMEDIATELY)

I

APINDE Inc. (Licensee or APINDE) is the holder of Byproduct Material License No. 47-35507-01 issued on January 9, 2019, by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Part 30 of *Title 10 of the Code of Federal Regulations* (10 CFR). The license authorizes possession and use of iridium-192 in sealed sources for use in industrial radiography operations and depleted uranium for use as shielding. The Licensee is located in Huntington, West Virginia, but the license also authorizes the company to perform work at temporary jobsites in all areas within NRC jurisdiction. The license, originally issued on January 9, 2019, is due to expire on January 31, 2034.

II

As a result of a current and ongoing review of APINDE's licensed activities, the NRC identified that information submitted by APINDE in the license application and in a subsequent license amendment request, was not complete and accurate in all material respects, which is an apparent violation of regulatory requirements. Specifically, in an initial license application dated October 10, 2018 (ML18297A261; nonpublic because it contains security-related information)¹, and in a related correspondence dated November 26, 2018 (ML18347A473; nonpublic because it contains security-related information), APINDE submitted inaccurate information about the qualifications for an individual proposed to be named on the license as the radiation safety officer (RSO). This resulted in the NRC issuing a license to APINDE that was based on inaccurate information and in APINDE maintaining an industrial radiography license without a qualified RSO. In a subsequent license amendment request dated June 12, 2019 (ML19178A216; nonpublic because it contains security-related information), APINDE requested to name a new RSO on the license, but again submitted inaccurate information. The NRC has also determined that APINDE used its NRC license to procure a sealed radiography source and may have allowed unauthorized access to the source in apparent violation of NRC regulations.

Regarding the inaccurate information, NRC regulations (10 CFR 34.13(g)) require applicants for a specific license to use licensed material in industrial radiography to identify and list the qualifications of the individual(s) designated as the RSO. As set forth in 10 CFR 34.42, the minimum qualifications, training, and experience for the RSO for an industrial radiography license are (1) completion of the training and testing requirements of 10 CFR 34.43(a); (2) 2000

¹ Designation in parentheses refers to an Agency-wide Documents Access and Management System (ADAMS) accession number. Unless otherwise noted, documents referenced in this letter are publicly-available using the accession number in ADAMS.

hours of hands-on experience as a qualified radiographer in industrial radiographic operations; and (3) formal training in the establishment and maintenance of a radiation protection program. The NRC can consider alternatives when the RSO has appropriate training and/or experience in the field of ionizing radiation, and in addition, has adequate formal training with respect to the establishment and maintenance of a radiation safety protection program. Information provided to the Commission by licensees or applicants for a license must be complete and accurate in all material respects (10 CFR 30.9(a)).

In its initial license application dated October 10, 2018, and in a subsequent response to an NRC reviewer's questions dated November 26, 2018, APINDE management attested that the proposed RSO had completed all required training. However, the NRC determined that the individual did not complete the required training. On June 12, 2019, following the resignation of the RSO named on APINDE's license, the Licensee submitted a license amendment application to the NRC to name a new RSO on the license. In the license amendment application, APINDE submitted inaccurate information pertaining to the new proposed RSO.

Regarding the unauthorized possession of and access to a radiography source, NRC regulations (10 CFR 37.21) require that licensees shall subject any individual, whose assigned duties require unescorted access to such material, to an access authorization program to ensure that the individuals are trustworthy and reliable. The NRC identified that, in early February 2019, APINDE procured a sealed radiography source from QSA Global Inc. and that APINDE may have allowed unauthorized access to the source, in violation of 10 CFR 37.21.

III

Based on the above, the NRC has determined that the Licensee provided inaccurate information concerning the proposed RSO that resulted in the NRC issuing a license based, in part, on inaccurate information. Submission of incomplete and inaccurate information in an NRC license application that is material to the NRC's decision to grant a license is grounds for revocation, suspension, or modification of the license (10 CFR 30.61). Additionally, the NRC has information that the Licensee used its license to obtain a source containing a significant quantity of radioactive material and that the Licensee may have permitted unauthorized access to the source in violation of NRC regulations. The Commission must be able to rely on its licensees to provide complete and accurate information and to conduct licensed operations in a manner that protects public health, safety, and security.

Consequently, I lack the requisite reasonable assurance that the Licensee's current operations can be conducted under License No. 47-35507-01 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, safety, and interest require that License No. 47-35507-01 be suspended. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the violations and conduct described above is such that the public health, safety, and interest require that this Order be immediately effective, and remain in place until the NRC obtains sufficient information to restore reasonable assurance that the Licensee is capable of safely conducting licensed activities.

IV

Accordingly, pursuant to Sections 81, 161b., 161i., 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. The authority to perform radiographic operations under License No. 47-35507-01 is hereby suspended pending further notice by the NRC.
- B. The Licensee shall not receive any NRC-licensed material while this Order is in effect. If the Licensee currently possesses any NRC-licensed material, the Licensee shall return it to locked, safe storage at the Licensee's facilities. All other requirements of the license and applicable Commission requirements, including those in 10 CFR Part 20 remain in effect.
- C. All records related to licensed activities shall be maintained in their current form and must not be altered in any way.

The Director, Office of Enforcement, or designee, may, in writing, relax or rescind this order upon demonstration by the Licensee of good cause.

In accordance with 10 CFR 2.202, the Licensee must submit an answer within 20 days of the date of this Order under written oath or affirmation. The answer shall specifically admit or deny each allegation or charge made within the Order, and shall set forth matters of fact and law on which the Licensee relies, and, if the Order is not consented to, the reasons as to why the Order should not have been issued. The response should be clearly marked as a "Reply to Order, (EA-19-090)," and sent to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator, Region I, 2100 Renaissance Boulevard, Suite 100, King of Prussia, PA 19406.

In addition, the Licensee may demand, and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the Federal Register. 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.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007, as amended by 77 FR 46562, August 3, 2012) , codified in pertinent part at 10 CFR Part 2, Subpart C. The E-Filing process requires

participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at (301) 415-1677, to 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 proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, web-based submission form. In order to serve documents through EIE, users will be required to install a web browser plug-in from the NRC web site. Further information on the web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene through the 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 documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time (ET) on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC 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, 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/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., ET, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person other than 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) and (f).

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 this Order is published in the Federal Register 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.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

George A. Wilson, Director
Office of Enforcement

Dated this 22 day of August 2019