

NUCLEAR REGULATORY COMMISSION

[EA-20-123; NRC-2023-0103]

In the Matter of APINDE Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Order; modification.

SUMMARY: On May 11, 2023, the NRC staff issued an Order revoking APINDE Inc's NRC license, effective 30 days from the date of the Order, due to a determination that the license was issued based on inaccurate information and in consideration that APINDE Inc. does not have a qualified Radiation Safety Officer (RSO). The license has been suspended since August 22, 2019, when the NRC staff, through an investigation by the NRC's Office of Investigations, first identified sufficient cause that the license had been issued based on inaccurate information and that APINDE Inc's RSO was not qualified. In a September 10, 2019, letter, the APINDE Inc. President/CEO acknowledged errors in the license application and stated that corrective actions would be taken. Beyond this written response, APINDE Inc. did not take any steps to restore the requisite reasonable assurance that operations could be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected.

DATES: The Order was issued on May 11, 2023.

ADDRESSES: Please refer to Docket ID **NRC-2023-0103** when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID **NRC-2023-0103**. Address questions about Docket IDs in

Regulations.gov to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the "For Further Information Contact" section of this document.

- **NRC's Agencywide Documents Access and Management System**

(ADAMS): You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- **NRC's PDR:** You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marjorie McLaughlin, Region I, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 610-337-5240; email: Marjorie.Mclaughlin@nrc.gov.

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated: June 8, 2023.

For the Nuclear Regulatory Commission.

/RA/

Raymond K. Lorson,
Regional Administrator,
NRC Region I.

NUCLEAR REGULATORY COMMISSION

In the Matter of)	Docket No. 03039133
)	
APINDE Inc.)	License No. 47-35507-01
Huntington, West Virginia)	EA-20-123
)	
)	

ORDER REVOKING LICENSE

I

APINDE Inc. (APINDE or Licensee) is the holder of Materials License No. 47-35507-01, issued by the 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, has an expiration date of January 31, 2034.

II

In early 2019, the NRC Office of Investigations (OI) initiated an investigation, in part, to evaluate whether APINDE representatives had forged various documents in the license application related to the training and qualifications of the individual designated as the Radiation Safety Officer (RSO). Upon partial completion of the investigation, it was determined that the NRC had issued a license to APINDE based on inaccurate information from the applicant regarding the qualifications of the RSO, and that APINDE lacked a qualified RSO. Namely, in the 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 an inaccurate training certificate and inaccurate information regarding the recent radiography experience for the individual proposed to be named on the license as the RSO. Additionally, 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 submitted an inaccurate training certificate for this individual as well.

The NRC staff determined that there was sufficient cause to suspend APINDE's license to prevent the company from obtaining/using licensed material due to the license having been issued based on inaccurate information and APINDE maintaining a radiography license without a qualified RSO. Consequently, on August 22, 2019, the NRC issued an Order Suspending APINDE's NRC license (ML19234A068) based on the lack of reasonable assurance that APINDE's operations could be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected. In response to the suspension, APINDE submitted a written response (ML19263C669), signed by APINDE's President/Chief Executive Officer (CEO), acknowledging the errors in the application and stating that APINDE would take corrective actions. Beyond this written response, APINDE did not take any steps to restore the requisite reasonable assurance that operations could be conducted in

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.

compliance with the Commission's requirements and that the health and safety of the public would be protected.

OI continued the investigation. After reviewing the investigation, the NRC staff concluded that APINDE provided inaccurate statements to the NRC in the initial APINDE license application about the recent radiography experience for the individual proposed to be the RSO and had provided an inaccurate training certificate for required RSO training. Additionally, in a subsequent license amendment request, APINDE requested NRC approval to name a new RSO on the license, but submitted an inaccurate training certificate for this individual as well. On March 19, 2019, the NRC conducted an inspection and verified APINDE did not possess any licensed material at their facility or at any other location. On December 31, 2022, the State of West Virginia annulled APINDE's corporate status.

III

Given that the license was issued to APINDE based on inaccurate information and that APINDE still lacks a qualified RSO, the NRC staff is revoking APINDE's NRC license, effective 30 days from the date of this Order. Unless good cause is otherwise given within 30 days of the date of revocation, the staff will terminate the license.

IV

Accordingly, pursuant to Sections 81, 161b, 161c, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 170.41, 171.23, and 10 CFR Part 30, IT IS HEREBY ORDERED THAT:

- A. License No. 47-35507-01 is revoked, effective 30 days from the date of this Order.

- B. After the license is revoked, the former Licensee may not resume previously-licensed operations until:
- a. the former Licensee has applied for and been issued a new license under 10 CFR Part 30; and
 - b. any debts to NRC, including the fee for the new license, have been paid in full.
- C. License No. 47-35507-01 will be terminated by the Commission unless good cause for not terminating the license is provided within 30 days of license revocation.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee of good cause. A request for modification of the above conditions shall be submitted to the Director, Office of Enforcement, with a copy to the Regional Administrator, NRC Region I, in writing and under oath or affirmation and must be received within 30 days from the date of this Order.

V

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within 30 days of its issuance. The answer shall be in writing and under oath or affirmation, and shall specifically admit or deny each allegation or charge made in this Order. The answer shall set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why this Order should not have been

issued.

Any answer shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555-0001. Copies shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; the Assistant General Counsel for Security and Enforcement at the same address; the Regional Administrator, NRC Region I, 475 Allendale Rd. Suite 102, King of Prussia, PA 19406-1415, and to the Licensee if the answer is by a person other than the Licensee.

In addition, the Licensee and any other persons adversely affected by this Order may request a hearing on this Order within 30 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, and include a statement of good cause for the extension. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If the Licensee or a person whose interest is adversely affected requests a hearing, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

A request for hearing must be filed in accordance with the NRC E-Filing rule, which became effective on October 15, 2007. The NRC E-Filing Final Rule was issued

on August 28, 2007, (72 Fed. Reg. 49,139) and codified in pertinent part at 10 CFR Part 2, Subpart C. The E-Filing process requires participants in adjudicatory proceedings 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 an exemption 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 hearing.docket@nrc.gov, or by calling (301) 415-1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any 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). 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 also is available on NRC's public website at <https://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a requestor has obtained a digital ID certificate and downloaded the EIE viewer, and a docket has been created, the requestor can then submit a request for a hearing through the EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public website at <https://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the

time the filer submits its document through the EIE.

To be timely, electronic filings must be submitted to the E-Filing system no later than 11:59 p.m. 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 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 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 through the "Contact Us" link located on the NRC website at <https://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC Electronic Filing Help Desk, which is available between 8 a.m. and 8 p.m., ET, Monday through Friday, excluding government holidays. The toll-free help line number is (866) 672-7640. A person filing electronically may also seek assistance by sending an e-mail to the NRC Electronic Filing Help Desk at MSHD.Resource@nrc.gov.

Participants who believe that they have 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, ATTN: 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, MD 20852, ATTN: 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 <https://adams.nrc.gov/ehd>, 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, 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 submissions.

VI

In the absence of a request for hearing, or written approval of an extension of time in which to request a hearing, License No. 47-35507-01 shall be revoked and all other provisions in Part III of this Order shall be final within 30 days of the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions in Part V shall be final when the extension expires if a hearing request has not been received.

VII

Pursuant to 10 CFR 15.29, the Commission may not consider an application for a new license unless all of the applicant's delinquent debts to the NRC have been paid in full.

Failure to meet the requirements of this Order may subject the Licensee and its agents to civil penalties and criminal sanctions.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

David L. Pelton, Director
Office of Enforcement

Dated at Rockville, Maryland
This 11th day of May, 2023