



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555 - 0001**

January 27, 2005

EA-04-103

Soil Consultants, Inc.
ATTN: Mr. Joseph W. Dixon, President
9303 Center Street
Manassas, VA 20110-5547

**SUBJECT: ORDER IMPOSING CIVIL MONETARY PENALTY - \$9,600
SOIL CONSULTANTS INC.**

Dear Mr. Dixon:

This refers to your letters dated November 5, 2004, and December 2, 2004, in response to the Notice of Violation and Proposed Imposition of Civil Penalty (Notice) sent to you by our letter dated October 6, 2004. Our letter and Notice described one violation of 10 CFR 30.7, "Employee protection," regarding the termination of an employee (dispatcher) for engaging in protected activities. To emphasize the importance of a safety conscious work environment, a civil penalty of \$9,600 was proposed.

In your responses of November 5, 2004, you denied that a violation occurred. You stated that Soil Consultants, Inc. (SCI) had ample grounds for terminating the dispatcher's employment on and prior to August 14, 2003, and that the decision to terminate him had been reached as early as July 15, 2003, with the publication of an inter-office memorandum seeking to fill the dispatcher's position. You further stated that the U.S. Nuclear Regulatory Commission (NRC) staff did not take into account the complete facts surrounding the SCI inquiry by failing to interview several employees concerning the circumstances that occurred from approximately August 4 through August 14, 2004. You also contend that the dispatcher self-terminated for not calling in for a four-day unexcused absence. Additionally, you contend that the inquiry as to who may have notified the NRC was only incidental to a larger concern regarding the apparent breakdown of emergency measures to safeguard the welfare of employees. Finally, you further assert that termination of the dispatcher was not motivated by his engagement in a protected activity.

After considering your response, we have concluded, for the reasons given in the Appendix attached to the enclosed Order Imposing Civil Monetary Penalty, that a violation occurred as stated and that an adequate basis for withdrawing the violation, reducing the severity level, or mitigating or rescinding the civil penalty has not been provided. Accordingly, we hereby serve the enclosed Order on Soil Consultants, Inc. imposing a civil monetary penalty in the amount of \$9,600. Within 30 days of the date of this letter, you should either: (1) pay the civil penalty in accordance with Section IV of the Order, or (2) request a hearing in accordance with Section V of the Order.

J. Dixon

-2-

We will review the effectiveness of your corrective actions during a subsequent inspection.

If you disagree with this order, you may request alternative dispute resolution (ADR) with the NRC in an attempt to resolve this issue. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ during a pilot program which is now in effect is mediation. Additional information concerning the NRC's pilot program is described in the enclosed brochure (NUREG/BR-0317) and can be obtained at <http://www.nrc.gov/what-we-do/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as an intake neutral. Please contact ICR at 877-733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR.

Questions concerning this letter should be addressed to Mr. Russell Arrighi, Senior Enforcement Specialist, Office of Enforcement, at 301-415-3936 or via e-mail at rja1@nrc.gov.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response (if you choose to provide one) will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. The NRC also includes significant enforcement actions on its Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Sincerely,

/RA/

Frank J. Congel, Director
Office of Enforcement

Docket No.: 030-33635
License No.: 45-15200-04

Enclosure:

- 1) Order Imposing Civil Monetary Penalty
- 2) NUREG/BR-0254 Payment Methods (Licensee only)
- 3) NUREG/BR-0317 Post-Investigation ADR Program

cc (w/enclosure 1 only):
State of Virginia Radiation Control Program Director

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Sincerely,

/RA/

Frank J. Congel, Director
Office of Enforcement

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cc (w/enclosure 1 only):
State of Virginia Radiation Control Program Director

ADAMS ACCESSION NUMBER: ML050270370
Document Name: E:\Filenet\ML050270370.wpd

*See previous concurrence

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DATE	1/12/05	1/25/05	1/25/05	1/27/05

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UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
Soil Consultants, Inc.)	Docket No. 030-33635
ATTN: Mr. Joseph W. Dixon, President)	License No. 45-15200-04
9303 Center Street)	EA-04-103
Manassas, VA 20110-5547)	

ORDER IMPOSING CIVIL MONETARY PENALTY

I

Soil Consultants, Inc. (Licensee) is the holder of Materials License No. 45-15200-04 issued by the Nuclear Regulatory Commission (NRC or Commission) on October 6, 2004, Amendment No. 03. The license authorizes the Licensee to use sealed source(s) contained in portable gauging devices (registered pursuant to 10 CFR 32.320 or equivalent Agreement State regulation) for measuring properties of materials in accordance with the conditions specified therein.

II

An investigation of the Licensee's activities was completed on February 11, 2004. The results of this investigation and the NRC's further consideration of this matter, including a predecisional enforcement conference held with you on August 12, 2004, indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated October 6, 2004. The Notice states the nature of violation, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The licensee responded to the Notice in letters dated November 5, 2004, and December 2, 2004. In its response, the Licensee denied a violation occurred.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282 and 10 CFR 2.205, IT IS HEREBY ORDERED THAT:

The Licensee pay a civil penalty in the amount of \$9,600 within 30 days of the date of this Order, in accordance with NUREG/BR-0254. In addition, at the time of making payment, the licensee shall submit a statement indicating when, and by what method, payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, such as requesting to engage in alternative dispute resolution, 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, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemaking and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406-1415. Because of continuing disruption in delivery of mail to United States Government offices, it is requested that requests for hearings be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event that the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

- (a) whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referred to in Section II above, and
- (b) whether, on the basis of such violation, this Order should be sustained.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Frank J. Congel, Director
Office of Enforcement

Dated this 27th day of January 2005

APPENDIX TO ORDER IMPOSING CIVIL MONETARY PENALTY - EA-04-103

EVALUATION AND CONCLUSION

On October 6, 2004, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation identified during the NRC Office of Investigations Report of Investigation No. 2-2003-016. Soil Consultants, Inc. (Licensee) responded to the Notice in letters dated November 5, 2004, and December 2, 2004. The licensee denied that a violation occurred. The NRC's evaluation and conclusion regarding the licensee's requests are as follows:

Restatement of Violation

10 CFR 30.7 prohibits discrimination by a Commission licensee against an employee for engaging in certain protected activities. Discrimination includes discharge and other actions that relate to compensation, terms, conditions or privileges of employment. The activities which are protected are established by Section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act. Protected activities include, but are not limited to, reporting of safety concerns by an employee to his employer or the NRC.

Contrary to the above, on August 14, 2003, Soil Consultants Inc. (SCI), an NRC licensee, discriminated against one of its employees, Mr. Arthur Clark, for engaging in protected activities. Specifically, Mr. Clark was terminated, at least in part, because SCI believed that he had notified the NRC regarding possible violations of NRC requirements.

Summary of Licensee's Response to the Violation

In the responses of November 5, 2004, the Licensee denied that a violation occurred. The Licensee stated that SCI had ample grounds for terminating the dispatcher's employment on and prior to August 14, 2003, and that the decision to terminate him had been reached as early as July 15, 2003, with the publication of an inter-office memorandum seeking to fill the dispatcher's position. It further states that the U.S. Nuclear Regulatory Commission (NRC) staff did not take into account the complete facts surrounding the SCI inquiry by failing to interview several employees concerning the circumstances that occurred from approximately August 4, 2004, through August 14, 2004. It also contends that the dispatcher self-terminated for not calling in for a four-day unexcused absence. Additionally, it contends that the inquiry as to who may have notified the NRC was only incidental to a larger concern regarding the apparent breakdown of emergency measures to safeguard the welfare of employees. Finally, it further asserts that termination of the dispatcher was not motivated by his engagement in a protected activity.

NRC Evaluation of Licensee's Response to the Violation

The NRC concluded that the response provided no new information related to specific circumstances of the Notice that would warrant a change in the subject enforcement action. The NRC staff was aware that there were a number of past issues such as tardiness and unauthorized purchases documented in the dispatcher's employee file; and that a job posting for a dispatcher was posted on July 15, 2003. The NRC staff did take into account the

complete facts surrounding the SCI inquiry. The NRC had interviewed a number of SCI employees during the Office of Investigations (OI) investigation and gathered sufficient information, including that provided by SCI during the predecisional enforcement conference (PEC), to make an informed decision regarding the circumstances involved in the matter.

Regarding the licensee's contention that SCI had no knowledge of the dispatcher's whereabouts for four days, a review of the OI report revealed that a witness testified that the dispatcher had called SCI from the hospital on August 11, 2003. The NRC considers this information to refute the licensee's denial of knowledge. The licensee's response also stated that the dispatcher reported that a rod fell out of a nuclear device and came in contact with him on August 4, 2003; however, he was not at work that day or the next. From the information gathered during the August 12, 2004, PEC, it was determined that the event had occurred on August 6, 2004, when the dispatcher was at work. Although it cannot be confirmed that the dispatcher reported the incident on the day in question, the facts show that he did report the event the following day to the laboratory manager, at which time the radiation safety officer was notified. The NRC recognizes that a delay of reporting a potential nuclear incident is not in accordance with SCI procedures and the event may have been a safety concern to other employees. However, SCI's concerted efforts to identify the individual who may have notified the NRC about potential safety concerns and then to take an adverse action against the dispatcher immediately after management was informed of an anonymous call to the NRC reporting those concerns, is a violation of NRC requirements.

NRC Conclusion

The NRC concludes that the licensee provided no new information related to the specific circumstances of the Notice that would warrant a change in the subject enforcement action. Accordingly, we hereby serve the enclosed Order on Soil Consultants Inc. imposing a civil monetary penalty in the amount of \$9,600.