



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, DC 20555 - 0001

February 1, 2005

EA-04-103

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

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

Dear Mr. Dixon:

We have become aware that the subject letter and the appendix to the Order, which issued the Soil Consultants, Inc. Order Imposing Civil Monetary Penalty - \$9,600 on January 27, 2005, did not reference the correct time frame surrounding the circumstances in which the dispatcher was terminated (August 4 through August 14, 2003). The ADAMS Accession Number for that document is ML050270370. Please substitute the enclosed amended pages into all copies of the subject Order. We apologize for any inconvenience caused by this error.

Be advised that the 30 day time frame specified in the Order to pay the civil penalty or request a hearing will commence from the date of this letter due to the staff's error. Where good cause is shown, consideration will be given to extending the time to request a hearing.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, and its enclosures, 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>

Should you have any questions concerning this matter, please contact Mr. Russell J. Arrighi at (301) 415-3936.

Sincerely,

**/RA/**

Frank J. Congel, Director  
Office of Enforcement

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

Enclosure: Order Imposing Civil Monetary Penalty - \$9,600 Amended Pages

cc w/enclosure:  
State of Virginia Radiation Control Program Director

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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, 2003. 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.

**Corrected February 1, 2005**

Enclosure

## 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, 2003, through August 14, 2003. 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

**Corrected February 1, 2005**

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, 2003, 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.