



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

April 13, 2005

EA-04-103

Soil Consultants, Inc.
ATTN: Mr. David F. Johns, President
9303 Center Street
Manassas, VA 20110-5547

**SUBJECT: COMMITMENTS TO BE CONFIRMED BY ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)**

Dear Mr. Johns:

A Confirmatory Order was discussed by the U.S. Nuclear Regulatory Commission (NRC) and your staff during an Alternative Dispute Resolution session on March 16, 2005. Based on our understanding of the commitments agreed to by Soil Consultants, Inc. (SCI), the NRC has drafted the enclosed Confirmatory Order.

Please inform us whether SCI will consent to the enclosed draft Confirmatory Order by providing your written response to me at U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Mail Stop O-14E1, Rockville, MD 20852, within ten working days of the date of this letter. If you consent to the Order, we request that you sign the enclosed Consent and Hearing Waiver form and return it to me at the above address. By signing the enclosed form, SCI agrees to have these commitments incorporated into a Confirmatory Order that will be effective immediately upon issuance and SCI will waive any and all rights to a hearing concerning the Order. After receiving your written consent, the NRC will issue the aforementioned Order.

Questions concerning this letter should be addressed to Russell Arrighi, Office of Enforcement, who can be reached at 301-415-3936.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," documents compiled for enforcement purposes are normally placed in the NRC Public Electronic Reading

D. Johns

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Room (PERR) link at www.nrc.gov/reading-rm/adams.htm. The NRC will delay placing a copy of this letter with its enclosures into the PERR until the Confirmatory Order is issued.

Sincerely,

/RA/

Frank J. Congel, Director
Office of Enforcement

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

Enclosures:

1. Consent and Hearing Waiver Form
2. Draft Confirmatory Order

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

D. Johns

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State of Virginia Radiation Control Program Director

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DATE	4/04/05	4/11/05	4/13/05

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N-NO COPY

Enclosure 1

CONSENT AND HEARING WAIVER FORM

Soil Consultants, Inc. (SCI) hereby agrees to comply with the commitments described in this letter and agrees to incorporation of these commitments into a Confirmatory Order that will be immediately effective upon issuance. I recognize that by signing below, SCI consents to the issuance of the Confirmatory Order, effective immediately, with the commitments described in SCI's letter dated April 8, 2005, and draft Confirmatory Order attached, and, by doing so, pursuant to 10 CFR 2.202(a)(3) and (d), SCI waives the right to request a hearing on all or any part of the Order.

David F. Johns, President

Date

Enclosure 2

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)

ATTN: Mr. David F. Johns, President)
Soil Consultants, Inc.)
9393 Center Street)
Manassas, VA 20110-5547)

Docket No. 030-33635
License No. 45-15200-04
EA-04-103

CONFIRMATORY ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)

I

Soil Consultants, Inc. (SCI or 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 in letters dated November 5, 2004, and December 5, 2004, and denied a violation occurred. An Order Imposing a civil penalty was

served upon the Licensee by letter dated February 1, 2005. The February 1st letter offered SCI the opportunity either to pay the civil penalty, request a hearing, or request alternative dispute resolution (ADR) in which a neutral mediator with no decision-making authority would facilitate discussions between the NRC and SCI and, if possible, assist the NRC and SCI in reaching an agreement on resolving the concern. SCI chose to participate in ADR. On March 16, 2005, the NRC and SCI met at NRC Headquarters in Rockville, Maryland in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution.

III

By letter dated April 8, 2005, the Licensee has agreed that in addition to the corrective actions outlined in their letters to the NRC dated November 5, 2004, and December 2, 2004, SCI would take certain additional measures to emphasize the importance of a Safety Conscious Work Environment at their facility. The Licensee agreed to:

1. Hire an outside consultant to:
 - a. Provide insight and develop an initial training module addressing a safety conscious work environment (SCWE) and 10 CFR 30.7, "Employee protection," regulation by no later than five months from the date of issuance of the Confirmatory Order,
 - b. Conduct initial training for managers and employees of SCI using the module by no later than six months from the date of issuance of the Confirmatory Order, and
 - c. Develop a refresher training module addressing SCWE and 10 CFR 30.7 for the managers and employees of SCI by no later than six months from the date of issuance of the Confirmatory Order.

2. By no later than six months from the date of issuance of the Confirmatory Order, SCI shall revise its training program requirements to conduct refresher training of SCWE and 10 CFR 30.7 at a frequency consistent with SCI's general employee training.
3. By no later than six months from the date of issuance of the Confirmatory Order, SCI shall revise its training program requirements to conduct SCWE and 10 CFR 30.7 training for new managers and employees of SCI, within sixty days of their assumption of duties.
4. Pay a civil penalty in the amount of \$1,200 for a violation of 10 CFR 30.7, "Employee protection," requirements within thirty days of the date of issuance of the Confirmatory Order.

On **(date)**, SCI consented to the NRC issuing this Confirmatory Order with the commitments, as described in Section IV below. SCI further agreed in its April 8, 2005, letter that this Confirmatory Order is to be effective upon issuance and that it has waived its right to a hearing. The NRC has concluded that its concerns can be resolved through effective implementation of SCI's commitments.

I find that the Licensee's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that SCI's commitments be confirmed by this Order. Based on the above and SCI's consent, this Order is immediately effective upon issuance. SCI is required to provide the NRC with a letter summarizing its actions when all of the Section IV requirements have been completed.

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 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 LICENSE NO. 45-15200-04 IS MODIFIED AS FOLLOWS:

1. The Licensee shall hire an outside consultant to:
 - a. Provide insight and develop an initial training module addressing a safety conscious work environment (SCWE) and 10 CFR 30.7, "Employee protection," regulation by no later than five months from the date of issuance of the Confirmatory Order,
 - b. Conduct initial training for managers and employees of SCI using the module by no later than six months from the date of issuance of the Confirmatory Order, and
 - c. Develop a refresher training module addressing SCWE and 10 CFR 30.7 for the managers and employees of SCI by no later than six months from the date of issuance of the Confirmatory Order.
2. The Licensee shall revise its training program requirements to conduct refresher training of SCWE and 10 CFR 30.7 at a frequency consistent with SCI's general employee training, by no later than six months from the date of issuance of the Confirmatory Order.
3. By no later than six months from the date of issuance of the Confirmatory Order, the Licensee shall revise its training program requirements to conduct SCWE and 10 CFR 30.7 training for new managers and employees of SCI, within sixty days of their assumption of duties.
4. Pay a civil penalty in the amount of \$1,200 for a violation of 10 CFR 30.7, "Employee protection," requirements within thirty days of the date of issuance of the Confirmatory Order.

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.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 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, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings 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, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406-1415, and to the Licensee. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing 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 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 person whose interest is adversely affected, 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 Confirmatory Order should be sustained.

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 of this Order 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

Frank J. Congel, Director
Office of Enforcement

Dated this xxth day of April 2005