



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

April 27, 2005

EA-04-103

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

SUBJECT: CONFIRMATORY ORDER

Dear Mr. Johns:

The enclosed Confirmatory Order is being issued to Soil Consultants, Inc. (SCI) to confirm recent commitments made to the U.S. Nuclear Regulatory Commission (NRC). The commitments were made by SCI as part of a settlement agreement between SCI and the NRC concerning an Order Imposing Civil Monetary Penalty issued by the NRC on February 1, 2005. In that Order, the NRC imposed a civil penalty in the amount of \$9,600 for a violation of 10 CFR 30.7, "Employee protection," requirements.

In response to the Order Imposing, SCI requested the use of the NRC alternative dispute resolution (ADR) process to resolve differences it had with the NRC concerning the violation. An ADR mediation session was held at NRC Headquarters in Rockville, Maryland, on March 16, 2005, at which time the settlement agreement was reached. The elements of the settlement agreement formulated and agreed to at the mediation session were documented in a letter from you to the NRC in a letter dated April 8, 2005, and are also contained in Section V of the enclosed Order.

As part of the settlement agreement, SCI agreed to pay a civil penalty in the amount of \$1,200, within 30 days of the date of this letter, for the violation of employee protection requirements and take additional corrective actions. In view of the Confirmatory Order, consent by SCI thereto as evidenced by your signed "Consent and Hearing Waiver Form" (copy enclosed) dated April 18, 2005, and subject to the satisfactory completion of the conditions of the Confirmatory Order by SCI, the NRC will not pursue further enforcement action on the subject of this investigation. We will, however, evaluate the implementation of your commitments related to employee protection during future inspections.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalties.

Questions concerning this Confirmatory Order should be addressed to Russell Arrighi, NRC Office of Enforcement, who can be reached at 301-415-3936 or via e-mail at RJA1@nrc.gov.

D. Johns

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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>. The NRC also includes significant enforcement actions on its Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Significant Enforcement Actions**. To the extent possible, your response to this Confirmatory Order should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Sincerely,

/RA/

Frank J. Congel, Director
Office of Enforcement

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

Enclosures:

1. Confirmatory Order
2. Copy of Consent and Hearing Waiver Form dated April 18, 2005
3. NUREG/BR-0254 Payment Methods (Licensee only)

cc w/enclosures:

State of Virginia Radiation Control Program Director

D. Johns

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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>. The NRC also includes significant enforcement actions on its Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Significant Enforcement Actions**. To the extent possible, your response to this Confirmatory Order should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

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

ADAMS ACCESSION: ML051170303

FILE NAME: E:\Filenet\ML051170303.wpd *See previous concurrence

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| OFC | OE:ES* | | OGC* | | OE:D | |
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| DATE | 4/11/05 | | 4/26/05 | | 4/27/05 | |

D. Johns

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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|-------------------------------------|---|-------------------------|
| In the Matter of |) | |
| |) | |
| ATTN: Mr. David F. Johns, President |) | Docket No. 030-33635 |
| Soil Consultants, Inc. |) | License No. 45-15200-04 |
| 9393 Center Street |) | EA-04-103 |
| Manassas, VA 20110-5547 |) | |

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," 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 April 18, 2005, SCI consented to the NRC issuing this Confirmatory Order, as described in Section IV below. SCI further agreed in its April 18, 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.

IV

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," 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 SCI of good cause.

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

/RA/

Frank J. Congel, Director
Office of Enforcement

Dated this 27th day of April 2005