

October 1, 2009

EA-09-114

Mr. Richard D. Olson, P.E.
Vice President
Earth Exploration, Inc.
7770 W. New York Street
Indianapolis, IN 46214-2988

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)
[NRC OFFICE OF INVESTIGATIONS REPORT NO. 3-2008-026]

Dear Mr. Olson:

The enclosed Confirmatory Order is being issued to Earth Exploration, Inc., as a result of a successful Alternative Dispute Resolution (ADR) session on August 25, 2009. The enclosed commitments were made by you as part of a settlement agreement concerning apparent violations that occurred at Earth Exploration, Inc.

In a letter dated July 21, 2009, the U.S. Nuclear Regulatory Commission (NRC) provided Earth Exploration, Inc., with the results of an investigation completed by the NRC's Office of Investigations (OI). As indicated in our letter, the NRC reached a preliminary conclusion that the deliberate actions of an Earth Exploration, Inc., employee contributed to Earth Exploration, Inc., being in violation of NRC requirements by failing to: (1) perform annual reviews of the radiation protection program; (2) perform leak testing of sealed sources; (3) perform physical inventories every six months of sealed sources; (4) ensure that dosimetry provided to gauge users was processed and evaluated by a processor approved through the National Voluntary Laboratory Accreditation Program; and (5) ensure through the Radiation Safety Officer that required tests and conditions of the NRC license are performed. In addition to these violations, the NRC also documented an apparent failure, on multiple occasions, to secure portable gauges using two independent physical barriers. A final apparent violation involved the failure to lock a gauge or gauge case when in storage. Five potential violations involving transportation issues were also identified. These potential violations included failure to: (1) ensure proper/legible markings on packages; (2) label transport packages; (3) block and brace two packages; (4) ensure the accessibility of shipping papers; and (5) provide an emergency response telephone number which is monitored at all times when radioactive material is in transportation. A Factual Summary of the OI investigation was enclosed with our letter.

Our letter of July 21, 2009, offered you a choice to: (1) attend a Predecisional Enforcement Conference; or (2) request ADR with the NRC in an attempt to resolve any disagreement on whether any violations occurred, the appropriate enforcement action, and the appropriate corrective actions. In response, you requested ADR to resolve the apparent violations. An ADR mediation session was held on August 25, 2009, at which time a preliminary settlement

agreement was reached. The elements of the preliminary agreement were formulated and agreed to at the mediation session and are contained within the enclosed Order. Consistent with the purposes of ADR, you and the NRC acknowledged that the session was not for the purposes of reaching any conclusions regarding any facts or circumstances as discussed in the NRC's letter dated July 21, 2009.

At the session, you agreed that corrective actions had been taken for the violations; however, you made no admission that any Earth Exploration, Inc., employee deliberately violated any NRC requirements. You agreed that the enclosed Confirmatory Order would be issued to settle the claim in order to avoid further action by the NRC. As part of the settlement agreement, you agreed to take a number of actions, including: (1) retaining the services of a consultant to audit the performance of your radiation safety program; (2) having several individuals take additional training; (3) conducting internal "lessons learned" training; and (4) providing a plan to inform other organizations so that they could avoid similar problems. In light of these actions, the NRC is satisfied that its concerns will be addressed by making your commitments legally binding through the enclosed Confirmatory Order. Therefore, the NRC has agreed not to pursue any further enforcement action in connection with the issues described in our July 21, 2009, letter to you.

We have enclosed a copy of the Confirmatory Order (Effective Immediately) to confirm the commitments made as part of the settlement agreement. As evidenced by your signed "Consent and Hearing Waiver Form" (copy enclosed) dated September 10, 2009, you agreed to issuance of this Confirmatory Order.

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.

You are not required to respond to this letter. However, if you choose to provide a response, please provide it to me within 30 days at U.S. Nuclear Regulatory Commission, Region III, 2443 Warrenville Road, Lisle IL 60532. If you have any questions or comments concerning this letter, please contact Mr. Steven Orth of my staff at 630-810-4373.

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 Agencywide Documents Access and Management System (ADAMS); accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC will also include this letter, and the enclosed Confirmatory Order, at

R. Olson

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<http://www.nrc.gov/about-nrc/regulatory/enforcement.html>; then select **Significant Enforcement Actions**. Your response to the Confirmatory Order, if any, will also be made available electronically for public inspection in the NRC Public Document Room or from ADAMS.

Sincerely,

/RA by Cynthia D. Pederson Acting for/

Mark A. Satorius
Regional Administrator

Enclosures:

1. Confirmatory Order
2. Consent and Hearing Waiver Form

cc w/encl 1: State of Indiana

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¹ FSME concurrence received per D. White via e-mail from K. Day on September 21, 2009.

² OGC No Legal Objection received via e-mail from M. Barkman on September 24, 2009.

³ OE concurrence received via e-mail from K. Day on September 21, 2009.

Letter to Richard D. Olson from Mark A. Satorius dated October 1, 2009

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[NRC OFFICE OF INVESTIGATIONS INVESTIGATION REPORT NO. 3-2008-026]

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