

February 3, 2012

EA-09-114

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

SUBJECT: RELAXATION OF CONFIRMATORY ORDER EA-09-114

Dear Mr. Olson:

On October 1, 2009, the U.S. Nuclear Regulatory Commission (NRC) issued a Confirmatory Order, EA-09-114 (Order) to Earth Exploration, Inc. (Earth Exploration) as a result of a successful Alternative Dispute Resolution session conducted on August 25, 2009.

On October 19, 2011, with a subsequent letter dated January 17, 2012, you requested relaxation of Item No.1 of Section V in the Order regarding the need to retain a consultant to perform annual independent audits. Specifically, Item No. 1 of Section V of the Order states that:

Earth Exploration shall retain a qualified consultant to audit the performance of its radiation safety program on an annual basis for a period of five years, with the first audit occurring within three months of the date of the Confirmatory Order. Copies of the consultant's audit reports will be submitted to the Director for the Division of Nuclear Materials Safety, Region III, NRC, within six weeks following completion of the audit.

Your consultant completed the first audit on December 29, 2009, and the second audit on January 25, 2011. Both audits were submitted to the NRC in accordance with the Order. In your October 19, 2011, and January 17, 2012, letters, you requested relaxation from the need to hire a qualified consultant for the entire five year period listed in the Order. Instead, you requested that the Order be relaxed to allow you to submit the results of your internal program review, performed in accordance with the requirements of Title 10 of the Code of Federal Regulations (10 CFR) Part 20, for the third and fourth years. You noted that a qualified consultant would be retained for the fifth year. You requested the relaxation in order to better use your resources to continue refreshing your understanding of NRC requirements and to continue to improve the Earth Exploration safety culture and portable gauge security. You noted the steps that had been taken to improve your program and the results of the audits performed by your qualified consultant for the first two years, which indicated that your program was in compliance with the requirements of your license.

On December 13 and 15, 2011, the NRC conducted an inspection at the Earth Exploration offices in Indianapolis, Indiana, and Niles, Michigan, to confirm Earth Exploration's continuing compliance with the Order and to conduct a baseline safety inspection. The details of that inspection are documented in NRC Inspection Report No. 0303027654/2011001(DNMS), dated December 20, 2011. During that inspection, the NRC reviewed both the audits performed by the independent consultant and Earth Exploration's internal program reviews. The NRC determined that you were in compliance with both the NRC's regulations and the terms of the Order.

Based on the information that you have provided in response to the Order and the satisfactory NRC inspection results, the NRC staff finds your response to the Order, to date, to be acceptable. Therefore, the NRC agrees to relax the requirement for Earth Exploration to retain a qualified consultant to perform an audit of the radiation safety program for the third and fourth year of the original five year requirement. The NRC agrees that Earth Exploration may instead submit to the NRC the results of its annual radiation safety program review, performed in accordance with 10 CFR 20.1101(c).

Specifically, the wording of Item No.1 in Section V of the Order is relaxed to read:

Earth Exploration shall retain a qualified consultant to audit the performance of its radiation safety program on an annual basis for the first, second and fifth years following issuance of the Order with the first audit occurring within three months of the date of the Confirmatory Order. Copies of the annual audit reports, performed by a qualified consultant in accordance with this Order will be submitted on the first, second, and fifth years and reports from annual reviews performed by Earth Exploration in accordance with 10 CFR 20.1101(c), will be submitted on the third and fourth year to the Director for the Division of Nuclear Materials Safety, Region III, NRC, within six weeks following completion of the audit.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and your response, if any, will be 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>.

R. Olson

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You are not required to respond to this letter unless the description herein does not accurately address your request for relaxation of your Order. If you should have any questions about this letter, please contact Mr. Steven Orth of my staff at 630-810-4373.

Sincerely,

/RA/

Cynthia D. Pederson
Acting Regional Administrator

Docket No. 030-32764
License No. 13-26408-01

cc: Christopher Loyd, RSO
State of Indiana

R. Olson

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Sincerely,

/RA/

Cynthia D. Pederson
Acting Regional Administrator

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State of Indiana

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*See previous concurrences

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¹ FSME concurrence received via e-mail from D. White on February 2, 2012.

² OGC No Legal Objection received via e-mail from M. Barkman Marsh on February 2, 2012.

³ OE concurrence received via e-mail from K. Day on February 3, 2012.

Letter to Richard D. Olson from Cynthia D. Pederson dated February 3, 2012

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