



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION III
2443 WARRENVILLE RD. SUITE 210
LISLE, IL 60532-4352

June 14, 2017

EA-16-282

Mr. James Kochevar
General Manager
Tilden Mining Company, L.C.
P.O. BOX 2000
Ishpeming, MI 49849

SUBJECT: CONFIRMATORY ORDER RELATED TO NRC SPECIAL INSPECTION REPORT
NO. 03034221/2016001; TILDEN MINING COMPANY, L.C.

Dear Mr. Kochevar:

The enclosed Confirmatory Order is being issued to Tilden Mining Company L.C. as a result of a successful Alternative Dispute Resolution (ADR) session. As the representative of the licensee, you made the enclosed commitments as part of a settlement agreement between Tilden Mining Company and the U.S. Nuclear Regulatory Commission (NRC) concerning apparent violations of NRC requirements. The apparent violations were discussed in the enclosure to our letter dated March 9, 2017.

Our March 9, 2017, letter (ML17068A150) was provided to you with the results of the NRC's special inspection of your Tilden Mine in Marquette County, Michigan. The purpose of the inspection was to review elements of your radioactive materials security program to ensure the program was established, implemented and maintained in accordance with NRC requirements. Based on the results of this inspection, apparent security-related violations of NRC requirements were identified.

Our letter also informed you that the apparent violations were being considered for escalated enforcement action in accordance with the NRC's Enforcement Policy, and provided you with the option of: (1) providing a written response to the violation; (2) attending a Predecisional Enforcement Conference; or (3) requesting an ADR mediation session with the NRC.

In response to our letter, you requested ADR. An ADR mediation session was held on May 8, 2017, and a preliminary settlement agreement was reached. The elements of the preliminary agreement were formulated and agreed to at the mediation session. At the session, you agreed that a Confirmatory Order would be issued in a settlement of the apparent violations in order to avoid further action by the NRC. In light of the corrective actions you took or agreed to take, as described in the Confirmatory Order (Enclosure 1), the NRC is satisfied that its concerns will be addressed by making your commitments legally binding. As evidenced by your signed "Consent and Hearing Waiver Form" (Enclosure 2), dated June 13, 2017, you agreed to the issuance of the 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 Confirmatory Order shall be subject to criminal prosecution, as set forth in that section. Violation of this Confirmatory Order may also subject the person to civil monetary penalties.

In accordance with Title 10 of the *Code of Federal Regulations* (CFR) 2.390 of the NRC's "Rules of Practice," a copy of this letter, along with 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 Confirmatory Order will be published in the Federal Register. The NRC also publishes Confirmatory Orders on its Web site under Significant Enforcement Actions at <http://www.nrc.gov/about-nrc/regulatory/enforcement.html>.

Sincerely,

/RA/

Cynthia D. Pederson
Regional Administrator

Docket No. 030-34221
License No. 21-26748-01

Enclosures:

1. Confirmatory Order
2. Consent and Hearing Waiver

cc w/ encls: State of Michigan

Letter to J. Kochevar from Cynthia D. Pederson dated June 14, 2017

SUBJECT: CONFIRMATORY ORDER RELATED TO NRC SPECIAL INSPECTION REPORT
NO. 03034221/2016001; TILDEN MINING COMPANY, L.C.

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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

In the Matter of)	
)	Docket No. 30-34221
Tilden Mining Company L.C.)	License No. 21-26748-01
)	
)	EA-16-282

**CONFIRMATORY ORDER MODIFYING LICENSE
(EFFECTIVE UPON ISSUANCE)**

I

Tilden Mining Company L.C. (Tilden Mining or Licensee) is the holder of byproduct material License No. 21-26748-01 issued on June 3, 2014, by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Part 30 of Title 10 of the *Code of Federal Regulations* (CFR). The license authorizes the possession and use of fixed gauges and silica analyzers at the Tilden Mine in accordance with conditions specified therein. The facility is located on the Licensee's site in Marquette County, Michigan.

This Confirmatory Order is the result of an agreement reached during an Alternative Dispute Resolution (ADR) mediation session conducted on May 8, 2017.

II

On March 9, 2017, the NRC issued Inspection Report 03034221/2016001(DNMS) to Tilden Mining, which documented the identification of apparent violations that were being considered for escalated enforcement action in accordance with the NRC Enforcement Policy.

The apparent violations involved the failure to implement its security program in accordance with NRC requirements.

By letter, dated March 9, 2017, the NRC notified Tilden Mining of the results of the inspection with an opportunity to: (1) provide a response in writing, (2) attend a predecisional enforcement conference or (3) participate in an ADR mediation session in an effort to resolve these concerns.

In response to the NRC's offer, Tilden Mining requested the use of the NRC's ADR process to resolve differences it had with the NRC. On May 8, 2017, the NRC and Tilden Mining met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. The ADR process is one in which a neutral mediator, with no decision-making authority, assists the parties in reaching an agreement on resolving any differences regarding the dispute. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III

During the ADR session, Tilden Mining and the NRC reached a preliminary settlement in an Agreement in Principal. The elements of the agreement include the following:

Tilden Mining has already taken a number of corrective actions including:

1. Repaired the alarm;
2. Installed a more robust door-access system; and

3. Initiated training for appropriate personnel on the operation of the new alarm system.

Therefore, the parties agree to the following terms and conditions:

1. Tilden Mining shall establish a Radioactive Material Oversight Committee to oversee the implementation of the Licensee's programs for radiation safety and radioactive source security. The Committee shall review and update the scope of work and documentation requirements for the Licensee's annual radiation safety and security audits/program reviews.

The Committee shall be comprised of the Radiation Safety Officer (RSO), the RSO's Manager, the Site General Manager, and other relevant stakeholders.

The Committee shall be established and hold its first meeting no later than September 30, 2017. Thereafter, the Committee shall at a minimum meet three times in 2018, twice in 2019, and annually thereafter until December 31, 2022.

The Committee shall review annual audits/program reviews and the effectiveness reviews required by paragraph 2 of this Agreement in Principle and ensure corrective actions are implemented, as appropriate. The Committee shall ensure that corrective actions and tasks required to ensure compliance are adequately documented and controlled within the Licensee's work-tracking system.

The Committee shall maintain records of its meetings to enable NRC inspection.

2. Tilden Mining shall complete two effectiveness reviews of the corrective actions taken in response to the Confirmatory Order. Each effectiveness review supplements the annual audits/program reviews required by NRC regulations and may be combined with those required audits/reviews. Each effectiveness review shall be conducted by an independent consultant.

The first effectiveness review shall be conducted no later than December 31, 2018, and the second shall be conducted no later than December 31, 2020.

The scope of each effectiveness review shall include review of Radioactive Material Oversight Committee activities and the effectiveness and sustainability of the corrective actions taken in response to the Confirmatory Order.

The Licensee shall provide a copy of the results of each effectiveness review to the Director, Division of Nuclear Materials Safety (DNMS), Region III, within 150 days of the Licensee's receipt of the consultant's final report. If the results indicate a potential or apparent violation of NRC requirements, the NRC will conduct an inspection to determine the facts and assess the significance prior to proposing any enforcement action.

3. For a period of 5 years from the date of the Confirmatory Order, Tilden Mining shall reflect in its work-tracking system tasks governing:
 - a. Annual coordination with the local law enforcement authority;
 - b. Twice yearly alarm system testing;
 - c. Any corrective actions directed by the Radioactive Material Oversight Committee;and

- d. Maintenance pertinent to security systems required under the applicable regulation.
4. For a period of 5 years from the date of the Confirmatory Order, Tilden Mining shall provide annual training to affected personnel on the access control and alarm response requirements of the applicable regulations and the Licensee's implementing procedures.

Based on the completed actions described above, and the commitments described in Section V below, the NRC agrees not to pursue any further enforcement action in connection with the NRC's March 9, 2017, letter to Tilden Mining and not to issue a civil penalty. The NRC considers the Confirmatory Order as an escalated enforcement action; however, it will not be considered an escalated enforcement action by the NRC for future assessment of violations occurring at Tilden Mining.

On June 13, 2017, Tilden Mining consented to issuing this Confirmatory Order with the commitments, as described in Section V below. Tilden Mining further agreed that this Confirmatory Order is to be effective upon issuance, the agreement memorialized in this Confirmatory Order settles the matter between the parties, and that it has waived its right to a hearing.

IV

I find that Tilden Mining's actions completed, as described in Section III above, combined with the commitments as set forth in Section V 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 public health and safety require that Tilden

Mining's commitments be confirmed by this Confirmatory Order. Based on the above and Tilden Mining's consent, this Confirmatory Order is effective upon issuance.

By no later than thirty (30) days after the completion of the commitments specified in Section V, Tilden Mining Company L.C. is required to notify the NRC in writing and summarize its actions.

V

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 37, IT IS HEREBY ORDERED, EFFECTIVE UPON ISSUANCE, THAT LICENSE NO. 21-26748-01 IS MODIFIED AS FOLLOWS:

1. Tilden Mining shall establish a Radioactive Material Oversight Committee to oversee the implementation of the Licensee's programs for radiation safety and radioactive source security. The Committee shall review and update the scope of work and documentation requirements for the Licensee's annual radiation safety and security audits/program reviews.

The Committee shall be comprised of the Radiation Safety Officer, the RSO's Manager, the Site General Manager, and other relevant stakeholders.

The Committee shall be established and hold its first meeting no later than September 30, 2017. Thereafter, the Committee shall at a minimum meet three times in 2018, twice in 2019, and annually thereafter until December 31, 2022.

The Committee shall review annual audits/program reviews and the effectiveness reviews required by paragraph 2 of this section and ensure corrective actions are implemented, as appropriate. The Committee shall ensure that corrective actions and tasks required to ensure compliance are adequately documented and controlled within the Licensee's work-tracking system.

The Committee shall maintain records of its meetings to enable NRC inspection.

2. Tilden Mining shall complete two effectiveness reviews of the corrective actions taken in response to this Confirmatory Order. Each effectiveness review supplements the annual audits/program reviews required by NRC regulations and may be combined with those required audits/reviews. Each effectiveness review shall be conducted by an independent consultant.

The first effectiveness review shall be conducted no later than December 31, 2018, and the second shall be conducted no later than December 31, 2020.

The scope of each effectiveness review shall include review of Radioactive Material Oversight Committee activities and the effectiveness and sustainability of the corrective actions taken in response to the Confirmatory Order.

Tilden Mining shall provide a copy of the results of each effectiveness review to the Director, DNMS, Region III, within 150 days of the Licensee's receipt of the consultant's final report. If the results indicate a potential or apparent violation of NRC requirements,

the NRC will conduct an inspection to determine the facts and assess the significance prior to proposing any enforcement action.

3. For a period of 5 years from the date of the Confirmatory Order, Tilden Mining shall reflect in its work-tracking system tasks governing:
 - a. Annual coordination with the local law enforcement;
 - b. Twice yearly alarm system testing;
 - c. Any corrective actions directed by the Radioactive Material Oversight Committee;
and
 - d. Maintenance pertinent to security systems required under the applicable regulations.

4. For a period of 5 years from the date of this Confirmatory Order, Tilden Mining shall provide annual training to affected personnel on the access control and alarm response requirements of the applicable regulations and the Licensee's implementing procedures.

In the event of the transfer of the operating license of Tilden Mining to another entity, the terms and conditions set forth in this Confirmatory Order shall continue to apply and accordingly survive any transfer of ownership or license.

The Regional Administrator, Region III may, in writing, relax or rescind any of the above conditions upon demonstration by Tilden Mining or its successors of good cause.

VI

In accordance with 10 CFR 2.202 and 10 CFR 2.309, any person adversely affected by this Confirmatory Order, other than Tilden Mining, may request a hearing within thirty (30) calendar days of the date of issuance of this Confirmatory Order. 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.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene (hereinafter "petition"), and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory

document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/getting-started.html>. Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at <http://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail to MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC

Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at <http://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the Commission or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve

the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The Commission will issue a Notice or Order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the *Federal Register* and served on the parties to the hearing.

If a person (other than Tilden Mining) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory 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 hearings. 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 V above shall be final 30 days from the date of this Confirmatory Order without further order or proceedings. If an extension of

time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

For the Nuclear Regulatory Commission

/RA/

Cynthia D. Pederson
Regional Administrator
NRC Region III

Dated this 14th day of June 2017