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7
8 **UNITED STATES NUCLEAR REGULATORY COMMISSION**

9 **Before the Executive Director for Operations**

10 GREENACTION FOR HEALTH AND
11 ENVIRONMENTAL JUSTICE,

12 Petitioner,

13 v.

14 TETRA TECH EC, INC.,

15 Respondent.

**Tetra Tech EC, Inc.'s Response to
10 CFR § 2.206 Petition to Revoke
Materials License No. 29-31396-01**

17 Tetra Tech EC, Inc. ("TtEC") respectfully submits this Response to the Petition of
18 Greenaction for Health and Environmental Justice ("Petitioner"), which seeks to revoke
19 the NRC materials license of TtEC (License No. 29-31396-01) based on allegations
20 related to TtEC's work at the Hunters Point Naval Shipyard ("HPNS" or "the Site") in San
21 Francisco, California.

22 The Petition does not meet the criteria for acceptance by the Petition Review
23 Board ("PRB") under 10 C.F.R. § 2.206. Specifically, the Petition should be rejected
24 because (1) it is based on alleged misconduct that did not occur under TtEC's Nuclear
25 Regulatory Commission ("NRC") materials license; (2) Petitioner has not presented
26 "significant new information," as is required to reopen the NRC's completed and closed
27 investigation of TtEC; and (3) Petitioner's allegations are either demonstrably false or so
28 implausible as to lack any credibility whatsoever.

1 The Petition is both procedurally flawed and substantively inaccurate. It is based
2 on false allegations that are part of a broader scheme concocted by Petitioner and its
3 legal counsel, including an attorney who has been disciplined multiple times by the
4 California State Bar for fabricating evidence. Petitioner's counsel has recruited declarants
5 who are willing to lie under oath with the expectation of receiving a financial benefit if the
6 government files an action against TtEC for making false claims. The NRC should not
7 allow the integrity of its licensing process to be tarnished by the perjured statements
8 submitted in support of the Petition.

9 The NRC has already completed a comprehensive investigation of data issues
10 identified at the Site by the Navy and TtEC. Those issues were thoroughly investigated
11 by TtEC, in close consultation with the Navy and the NRC. The investigation and results
12 were documented in a report issued by TtEC (the "Investigation Conclusion Anomalous
13 Soil Samples at Hunters Point Naval Shipyard" report, April 2014). Both the Navy and the
14 NRC reviewed the report, and the Navy accepted the report's conclusions.

15 The NRC has also conducted two independent investigations into the allegations
16 against TtEC, from 2011 to 2013 and again in 2014. This included investigating the data
17 irregularities identified by the Navy, and a broader investigation into allegations made by
18 former employees and subcontractors. The NRC filed and resolved an enforcement
19 action against TtEC that addressed the discrete, localized data irregularities identified in
20 the TtEC/Navy investigation, and found all other allegations of misconduct to be
21 unsubstantiated. Any further investigation by the NRC, triggered solely by Petitioner's
22 and declarants' willingness to lie to the NRC for financial gain, is not necessary or
23 warranted under 10 C.F.R. § 2.206. Therefore, the PRB should reject the Petition.

24 **I. BACKGROUND**

25 **A. HPNS Historical Use and Superfund Designation**

26 HPNS is a former Naval shipyard located in southeast San Francisco, California.
27 HPNS functioned as a Navy-run repair facility from 1939 to 1974, with private companies
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1 operating at the Site prior to and following its use as a Naval base.¹ The shipyard was
2 used for radiological operations beginning in 1946, which included the repair, use, and
3 disposal of radioluminescent items, gamma radiography for testing, radiological research
4 and laboratory operations, decontamination and scientific research during atomic
5 weapons testing, and additional use of radionuclides for scientific research by the Naval
6 Radiological Defense Laboratory.² Numerous radiological investigations, surveys, and
7 studies have been conducted at the Site.³

8 Shipyard operations were permanently terminated following the Navy's decision in
9 1998 to add HPNS to its Base Realignment and Closure ("BRAC") Program for cleanup
10 and transfer of the military installation for redevelopment.⁴ In 1989, the U.S.
11 Environmental Protection Agency ("EPA") evaluated and placed HPNS on the Superfund
12 National Priorities List in response to concerns about hazardous and radiological wastes
13 created by historical activities at the Site.⁵ The Navy is the lead agency responsible for
14 investigation and cleanup, while the EPA is the lead regulatory agency providing federal
15 oversight.⁶ To manage cleanup of the 934-acre HPNS Site, the Site was divided into
16 thirteen parcels.⁷ Parcel A was transferred to the San Francisco Office of Community
17 Investment and Infrastructure (formerly the San Francisco Redevelopment Agency) in

18 _____
19 ¹ See NAVSEA, Hunters Point Shipyard Final Historical Radiological Assessment History of Use of General Radioactive Materials 1939-2003 (2004), at Section 6.0, available at
20 https://bracpmo.navy.mil/content/dam/bracpmo/california/former_naval_shipyard_hunters_point/pdfs/all_documents/environmental_documents/radiological/hps_200408_hra.pdf.

21 ² See *id.*

22 ³ *Id.*

23 ⁴ EPA, Hunters Point Naval Shipyard Annual Update of Cleanup Achievements, SEMS-
24 RM DOC ID #100005400 (2017), at p. 1, available at <https://semspub.epa.gov/work/09/100005400.pdf> ("EPA, 2017 Annual Update").

25 ⁵ EPA, 2017 Annual Update at p. 1.

26 ⁶ EPA, Treasure Island Naval Station+Hunters Point Annex San Francisco, CA
27 Background, available at <https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.Cleanup&id=0902722#bkground>.

28 ⁷ EPA, 2017 Annual Update at p. 3.

1 2004, and Parcels D-2, UC-1, and UC-2 were transferred to the City in 2015; cleanup
2 activities on the remaining nine parcels are ongoing.⁸

3 **B. TtEC's Engagement and Work at HPNS**

4 TtEC was first awarded a contract to perform work for the Navy at HPNS in 2002,
5 and had a continuous presence at HPNS through 2016 for both non-radiological studies
6 and radiological tasks. TtEC was involved in three major categories of radiological tasks
7 at HPNS: (1) removal of Navy contaminated sanitary sewers and storm drains, (2)
8 surveys of impacted buildings and former building sites, and (3) radiological support
9 activities.

10 The Navy initially directed TtEC to hire a small business subcontractor to complete
11 the radiological work and identified New World Environmental ("NWE"), dba New World
12 Technology, as the sole radiological subcontractor able to complete the necessary work.⁹
13 NWE was already present and working at the Site prior to the time that TtEC was
14 awarded its first radiological contract in 2003. From that point until March 30, 2009, all
15 radiological work at HPNS was completed under only NWE's license. Unfortunately,
16 TtEC's reliance on NWE created unclear lines of authority at the Site, leading to quality
17 control and morale issues. To address these issues, TtEC developed a new management
18 plan for HPNS in 2006, under which TtEC placed senior managers onsite at HPNS full
19 time, hired radiological supervisors to manage the fieldwork, and developed a
20 comprehensive data management system and standard operating procedures.

21 In early 2009, to resolve ongoing issues with NWE's performance, TtEC, with the
22 support of the Navy, invoked its own NRC materials license at the Site. TtEC's license
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25 ⁸ *Id.*

26 ⁹ See Memorandum from Laurie Lowman, Director, Radiation Support and Navy Low-
27 Level Radioactive Waste, Naval Sea Systems Command Detachment, Radiological
28 Affairs Support Office, Qualification of Radiological Subcontractor at HPNS (Jan. 23,
2007), attached as Exhibit 1.

1 was invoked on March 30, 2009.¹⁰ Based on the Navy Radiological Affairs Support
2 Office's ("RASO") input, TtEC hired experienced NWE supervisors and workers, including
3 Petitioner's Declarant Elbert Bowers, to maintain continuity at HPNS.

4 All of TtEC's work was performed to ensure public safety, and was conducted with
5 the nearly continuous presence of state, local, and federal regulatory agencies. In
6 particular, the Navy RASO was a daily presence at the Site. The work that TtEC
7 performed was extensive. TtEC removed 24 miles of sewer and storm drains and 32,853
8 cubic yards of asphalt and concrete, screened 270,000 cubic yards of excavated soil, and
9 conducted thousands of surveys. All of this work was closely overseen and approved by
10 the Navy, in addition to regular review by state and federal regulatory agencies.

11 C. NRC Former Employee Investigations

12 Petitioner relies on the declarations of former NWE and TtEC employees in
13 support of its request to reopen the NRC's prior investigation regarding the Site. These
14 declarations include statements from Elbert Bowers, Archie Jackson, Arthur Jahr, and
15 Susan Andrews, all of whom made prior complaints to the NRC in which they alleged
16 they were harassed, discriminated against, or terminated for raising safety concerns at
17 HPNS. As described below, the NRC investigated each of these claims and was unable
18 to corroborate them.¹¹

19 In or about August 2010, TtEC was informed that Arthur Jahr, an NWE employee,
20 had made inappropriate comments while working at HPNS. NWE investigated and
21 confirmed the claims, at which point TtEC requested that Jahr be removed from the Site.
22 Jahr subsequently filed a complaint with the NRC alleging that he was subjected to
23 harassment and discrimination for raising safety concerns. The NRC determined that
24

25 ¹⁰ See Letter from Tetra Tech EC, Inc. to U.S. Regulatory Commission, Region IV,
26 Notification of License Use at Hunter Point Shipyard (Mar. 13, 2009), attached as Exhibit
27 2.

28 ¹¹ See *generally*, Letters from NRC to TtEC regarding these investigations, attached at
Exhibit 3.

1 there was insufficient evidence to support Jahr's claims.¹²

2 In or about January 2011, Elbert Bowers, then a TtEC employee (following his
3 employment with NWE), was involved in a dispute with three Radiation Technician
4 Supervisors, as well as with Bill Dougherty, TtEC's onsite Project Manager. Because of
5 Bowers' inappropriate behavior toward the Radiation Technician Supervisors, who
6 reported to him, TtEC management moved Bowers off HPNS to another TtEC project
7 site. He then alleged discrimination, and later in 2011, the NRC began an investigation to
8 determine whether Bowers had been discriminated against by TtEC for raising safety
9 concerns. The investigation continued for over a year, and closed on or about May 29,
10 2013. The NRC was unable to substantiate Bowers' claims.¹³

11 In December 2011, the Navy revised the scope of work for base wide support at
12 HPNS, which required a staff reduction of two Radiation Control Technicians. Andrews
13 and Jackson were selected for reduction and did not return to the project. Both Andrews
14 and Jackson later filed complaints with the NRC, each alleging that they were wrongfully
15 terminated for raising safety concerns at the Site. The NRC Investigated and was unable
16 to validate Jackson's and Andrews' allegations.¹⁴

17 **D. 2012 TtEC Investigation of Soil Sampling Issues**

18 In October 2012, during a routine conference call, a Navy official at RASO
19 expressed concerns about certain TtEC sampling data.¹⁵ Final systemic samples at one
20 location (Building 517) appeared to report lower than expected Potassium-40 levels.¹⁶

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22 ¹² See Letter from NRC to Albert Perry, NRC Office of Investigations Case No. 1-2012-
23 032 (July 8, 2013) at p.1, attached at Exhibit 3.

24 ¹³ See Letter from NRC to Albert Perry, NRC Office of Investigations Case No. 1-2012-
25 002 (May 29, 2013), at p.1, attached at Exhibit 3.

26 ¹⁴ See Letter from NRC to Albert Perry, NRC Office of Investigations Case Nos. 1-2012-
27 019 and 1-2012-037 (Dec. 6, 2013) at p. 1, attached at Exhibit 3.

28 ¹⁵ See TtEC, Investigation Conclusion Anomalous Soil Samples at Hunters Point Naval
Shipyard (Apr. 2014), Petition Exhibit H at ES-1, 1.

¹⁶ *Id.*

1 TtEC conducted an extensive investigation and identified a number of corrective actions,
2 summarized in the TtEC "Investigation Conclusion Anomalous Soil Samples at Hunters
3 Point Naval Shipyard" report, the first draft of which was submitted to the Navy on
4 November 29, 2012, and to the NRC on December 3, 2012. After extensive discussions
5 with the Navy and responding to multiple rounds of its comments, TtEC finalized the
6 report in April 2014.¹⁷

7 To determine what happened, TtEC investigators conducted additional sampling at
8 identified locations, performed a database review of over 70,000 sampling results
9 reported since 2008, and conducted in-person interviews with individuals identified on the
10 chain-of-custody ("COC") forms, as well as direct supervisors, members of sampling
11 crews, and lab workers.¹⁸ During the investigation, and despite repeated questioning, no
12 individuals admitted to any improper sampling, resulting in an inconclusive determination
13 as to exactly what had occurred with the samples. However, investigators determined the
14 likely cause was that individuals identified as the sample collectors on certain COCs had
15 not collected soil from the COC-identified locations.¹⁹ The evidence indicated that
16 samples from twelve survey units were potentially not representative of the identified
17 locations and seven additional units were determined to be of potential concern.²⁰

18 To ensure that all remediation was completed as required, TtEC resampled all
19 twelve survey units, as well as four of the additional seven units where potential issues
20 were identified, and then conducted remediation and re-sampling in those areas as
21 necessary.²¹ The three remaining potentially suspect areas were not resampled because
22 the uniform results were determined to be a result of naturally occurring soil

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¹⁷ *Id.*

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¹⁸ *Id.* at ES-1 to ES-2, 4-18.

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¹⁹ *Id.* at ES-2, 18-19.

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²⁰ *Id.* at ES-1.

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²¹ *Id.* at ES-3, ES-5.

1 homogeneity, and not the result of potential data manipulation.²²

2 TtEC took further actions to ensure the accuracy of future sampling and instituted
3 procedures to immediately identify and escalate any sampling issues. These procedures
4 included refresher training on sampling and filling out COC forms, training on ethical
5 behavior, quality control surveillance, and notification of the corporate Radiation Safety
6 Officer ("RSO") whenever samples were inconsistent with prior results.²³

7 The Radiation Control Technicians associated with the irregular samples at the
8 Site were permanently removed from TtEC projects following the investigation.²⁴ In
9 addition, the two Radiation Task Supervisors overseeing the work were suspended
10 without pay for 30 days and placed on a one-year probation. Five years later in 2017,
11 those two individuals, Justin Hubbard and Steven Rolfe, admitted to the U.S. Department
12 of Justice that they switched certain soil samples at issue in the investigation so that
13 "clean" soil was analyzed rather than soil from the COC-identified sampling location.
14 Hubbard and Rolfe were prosecuted and sentenced to prison. TtEC fully supports the
15 Government's actions in those cases.

16 No TtEC managers were indicted for having any knowledge of, or involvement in,
17 Hubbard's or Rolfe's activities. Further, the NRC fully investigated the soil sampling
18 incident (as discussed further below) and concluded that TtEC management was not
19 involved in the misconduct.²⁵ The outcome of the NRC investigation and the apparent
20 result of the Department of Justice's criminal investigation are consistent with the
21 conclusion of TtEC's and the Navy's investigation of the data issues identified in 2012:
22 isolated instances of misconduct by low-level employees had taken place. TtEC
23 investigated and resampled the affected areas and implemented procedures to prevent
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25 ²² *Id.* at ES-2.

26 ²³ *Id.*

27 ²⁴ *Id.*

28 ²⁵ See Petition, Exhibit J, Encl. 1 at p. 2, NRC Response to Point #3.

1 the recurrence of such misconduct.

2 **E. 2014 NRC Investigation of Soil Sampling Issues**

3 In June 2014, the NRC notified TtEC that it too was investigating the soil sampling
4 issues identified in TtEC's April 2014 report. The NRC's investigation began on or about
5 April 29, 2014, and lasted over a year.²⁶ The NRC took sworn statements from TtEC
6 HPNS managers, including Dennis McWade and Bill Dougherty, as well as numerous
7 Radiation Control Technicians and Radiation Task Supervisors involved in soil sampling
8 and remediation activities at the Site.

9 The NRC investigation covered the same time period as the TtEC and Navy
10 investigations of soil sampling issues at the Site. During the course of the NRC
11 investigation, it was revealed that a Radiation Control Technician and a Radiation Task
12 Supervisor deliberately falsified soil samples by gathering samples from an area other
13 than where the samples were identified as having originated.²⁷ The NRC determined that
14 both individuals were acting outside of established TtEC protocols.²⁸ The NRC further
15 concluded that TtEC management was not involved in any of the data falsification.²⁹
16 Despite the breadth of the NRC's investigation, the NRC did not identify any further
17 sampling issues, and the NRC's conclusions were consistent with the results of TtEC's
18 and the Navy's investigations.

19 **F. Petitioner Makes False and Implausible Allegations of Widespread
20 Fraud at HPNS**

21 Petitioner is a community organization with an anti-development agenda. It
22 disagrees with the City of San Francisco's decision to support the development of
23 thousands of units of sorely needed housing at the HPNS site. Petitioner's goals for the

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25 ²⁶ See Letter from NRC to Andrew Bolt, NRC Office of Investigations Report No. 1-2014-
26 018 (Feb. 11, 2016), Petition Exhibit I at p.1 (noting that the NRC investigation began
27 April 29, 2014 and was completed September 15, 2015).

27 ²⁷ *Id.* at Encl. 1, p. 1.

28 ²⁸ *Id.*

29 ²⁹ See Petition, Exhibit J, Encl. 1 at p. 2, NRC Response to Point #3.

1 Site are ill-defined; the main purpose of its campaign appears to be to generate political
2 and financial support by opposing development, without offering plausible alternatives for
3 the reuse of a large plot of vacant land in a densely populated urban area with the
4 highest housing costs in the nation.

5 To advance this agenda, Petitioner has joined forces with attorney David Anton to
6 suborn perjury. As discussed in detail below, the declarations of the former NWE and
7 TtEC employees submitted in support of the Petition are rife with statements that are
8 demonstrably false, or so implausible that anyone with even a passing familiarity with the
9 investigation and remediation of contaminated property would know they are not true.

10 Anton and Petitioner's other attorneys—who clearly drafted these false
11 statements—are apparently not familiar with environmental site cleanup. Anton, however,
12 is familiar with falsifying evidence. Anton has been suspended twice by the California
13 State Bar, and one of those suspensions is based on his admission that he "fabricated
14 evidence" in a wrongful termination case filed in federal court.³⁰ He has done so again
15 here, encouraging Declarants to perjure themselves to advance Petitioner's interests—as
16 well as their own, as the Declarants have a financial stake in potential claims against
17 TtEC.

18 As discussed below, Declarants' false allegations do not provide a credible basis
19 for reopening the NRC's closed investigation of TtEC's work at HPNS. The NRC should
20 disregard Petitioner's false allegations, and should reject the Petition because it is
21 improper under 10 C.F.R. § 2.206.

22 **II. LEGAL STANDARD**

23 The Petition is brought pursuant to 10 C.F.R. § 2.206, which provides that "[a]ny
24 person may file a request to institute a proceeding pursuant to [10 C.F.R.] § 2.202 to
25 modify, suspend, or revoke a license, or for any other action as may be proper." NRC
26 Management Directive 8.11 ("MD 8.11") governs the NRC's internal review process for

27 _____
28 ³⁰ See Attorney Licensee Profile, David C. Anton, State Bar No. 94852, available at
<http://members.calbar.ca.gov/fal/Licensee/Detail/94852>.

1 10 C.F.R. § 2.206 petitions. Petitions must meet certain criteria in order to be accepted
2 by the NRC and considered under § 2.206, including:

- 3 ▪ the petition must contain a "request for enforcement related action;"
- 4 ▪ the facts that constitute the bases for taking the particular action must be
5 specified, supported "beyond the bare assertion," and be "credible and sufficient to
6 warrant further inquiry;" and
- 7 ▪ there must be no available NRC proceeding "in which the petitioner is, or could be,
8 a party and through which the petitioner's concerns could be addressed."³¹

9 Additionally, the M.D. 8.11 specifies criteria for rejecting petitions. These criteria are:

- 10 ▪ the "correspondence does not ask for an enforcement-related action," or "fails to
11 provide sufficient facts to support the petition;"
- 12 ▪ the "petitioner raises issues that have already been the subject of NRC staff
13 review and evaluation ... for which a resolution has been achieved, the issues
14 have been resolved, and the resolution is applicable to the facility in question;"
- 15 ▪ the "request is to deny a license application or amendment;" and
- 16 ▪ the "request addresses deficiencies within existing NRC rules."³²

17 The PRB is tasked with determining whether a petitioner's request meets the criteria for
18 review as outlined above.³³ The PRB then makes a recommendation to the appropriate
19 Director as to whether to accept or reject the petition.³⁴

20 **III. THE PETITION IS BASED PRIMARILY ON ALLEGATIONS THAT ARE**
21 **UNRELATED TO TTEC'S MATERIALS LICENSE.**

22 Until March 30, 2009, TtEC subcontractor NWE, dba New World Technology, held
23 the NRC license for work performed at HPNS. NWE was employed as a subcontractor at
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25 ³¹ MD 8.11 Part III(C)(1)(a) at p.11.

26 ³² *Id.*, Part III(C)(2) at p.12.

27 ³³ *Id.*, Part III(D) at p.13.

28 ³⁴ *Id.*, Part III(G) at p.15-16.

1 the Site at the direction of the Navy.³⁵ TtEC's license was invoked on March 30, 2009.³⁶

2 The allegations in the Petition rely in large part, and in some cases entirely, on
3 alleged misconduct that took place prior to March 30, 2009, under NWE's NRC license.

4 For example:

5 ▪ Petitioner alleges that "sometime in early 2006 . . . Joe Levell . . . substantially
6 increased" the speed at which a conveyor belt for scanning potentially
7 contaminated soil operated.³⁷ The conveyor speed issue is mentioned throughout
8 the declarations in support of the Petition, but all of these allegations fall outside
9 the time period that TtEC's license was in effect. In fact, TtEC and NWE identified
10 and corrected a scan speed issue in 2006, and took all necessary precautions to
11 ensure that all affected soil was rescanned as necessary.³⁸

12 ▪ Petitioner alleges that inadequate remediation was conducted in Building 351A in
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15 ³⁵ See Memorandum from Laurie Lowman, Director, Radiation Support and Navy Low-
16 Level Radioactive Waste, Naval Sea Systems Command Detachment, Radiological
17 Affairs Support Office (RASO), Qualification of Radiological Subcontractor at HPNS,
(Jan. 23, 2007), attached as Exhibit 1.

18 ³⁶ See Letter from Tech EC, Inc. to U.S. Regulatory Commission, Region IV, Notification
of License Use at Hunter Point Shipyard (Mar. 13, 2009), attached as Exhibit 2.

19 ³⁷ Petition at p. 24, ln. 3-4.

20 ³⁸ During the week of May 29, 2006, a contaminated button was identified at the portal
21 monitor. The portal monitor ensured the adequacy of soil scanning processes by
22 checking truckloads of soil departing HPNS. TtEC and NWE quality control and
23 radiological staff conducted an investigation to determine how the button was missed
24 during scanning. The investigation consisted of field inspections, reviewing compliance
25 with procedures, contacting the conveyor vendor and maintenance providers, and
26 interviewing over twenty-four TtEC and NWE staff at the relevant scanning sites. The
27 investigation determined that the scan speeds were likely altered during a partial
28 disassembly and reassembly of the conveyor during a winter shutdown. The investigation
identified other potential causes of inadequate scanning, including a lack of consistent
staff training. In response, TtEC and NWE adjusted procedures to ensure compliance.
Affected soil was rescanned, twice daily checks of conveyor belt speed were instituted as
well as routine quality control checks, additional staff refresher training was provided, and
procedures were adjusted to ensure the effectiveness of the soil scanning process. The
Navy was notified, oversaw, and approved TtEC's response.

1 2008 and 2009.³⁹ Building 351A remediation was complete in January 2009,⁴⁰
2 before TtEC's license was invoked on March 30, 2009.

- 3 ■ Allegations regarding Jane Taylor's purportedly questionable resume and
4 subsequent hiring by NWE occurred in 2006.⁴¹ TtEC was not involved in NWE's
5 hiring decisions.
6 ■ All of the allegations contained in Richard Stoney's declaration occurred prior to
7 Stoney's resignation on May 28, 2006.⁴²
8 ■ The allegations in Robert McLean's declaration all relate to his work for NWE at
9 HPNS until the fall of 2006, when he was transferred offsite.⁴³

10 Because the Petition seeks to revoke TtEC's license, the NRC's review should be
11 confined to those allegations that occurred on or after March 30, 2009, during the use of
12 TtEC's license at HPNS.

13 **IV. PETITIONER HAS NOT PRESENTED "SIGNIFICANT NEW INFORMATION" TO**
14 **THE NRC.**

15 The NRC must reject a petition under 10 C.F.R. § 2.206 if the petitioner "raises
16 issues that have already been the subject of NRC staff review and evaluation."⁴⁴
17 Requests for NRC action "will not be treated as a 2.206 petition unless they present
18 significant new information."⁴⁵ Petitioner's allegations are little more than a rehashing and
19 repackaging of allegations that were the subject of the NRC's prior investigation of TtEC
20 and do not meet this threshold criteria for acceptance of the Petition.

21
22 ³⁹ See Petition at p. 14, ln.19 to p.16, ln. 10.

23 ⁴⁰ See Portions of Building 351A Logbook, attached as Exhibit 4.

24 ⁴¹ See Petition at p. 26, ln. 12 to p.27 ln. 3.

25 ⁴² See Declaration of Richard Stoney, Petition Exhibit G at ¶ 3.

26 ⁴³ See Declaration of Robert Mclean, Petition Exhibit N at ¶ 3.

27 ⁴⁴ 10 C.F.R. § 2.206.

28 ⁴⁵ NRC, Management Directive 8.11: Review Process for 10 CFR 2.206 Petitions (Jul. 1, 1999, revised Oct. 25, 2000), Part III(C)(2)(b) ("MD 8.11").

1 **A. The NRC has already completed its investigation of the sampling**
2 **issues alleged in the Petition.**

3 NRC's investigation into sampling issues at the HPNS Site, which began in 2014,
4 was extensive. The investigation took over a year and involved numerous interviews of
5 HPNS staff.⁴⁶ The investigation identified that a Radiation Control Technician and a
6 Radiation Task Supervisor had falsified soil samples and completed inaccurate COC
7 forms.⁴⁷ These are the same substantive allegations regarding fraudulent sampling that
8 appear in the Petition.

9 The NRC investigation confirmed that any suspect data at the Site was limited to
10 the conduct of one Radiation Control Technician and one Radiation Task Supervisor who
11 falsified soil samples and one Radiation Task Supervisor who falsified chain-of-custody
12 forms. The investigators found no evidence that TtEC managers participated in or
13 directed this unlawful conduct.

14 On October 11, 2016, the NRC issued a Confirmatory Order that identified a single
15 violation of TtEC's license conditions that occurred sometime between November 11,
16 2011, and June 4, 2012, and noted that "TtEC remains in good standing with respect to
17 the terms and conditions of its NRC license."⁴⁸ The NRC therefore agreed to waive
18 imposition of civil penalty, and TtEC in turn agreed to conduct safety and worker
19 awareness training for employees engaged in licensed activities, among other
20 conditions.⁴⁹

21 Petitioner had the opportunity to object to the Confirmatory Order and request a
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24 ⁴⁶ See Letter from NRC to Andrew Bolt, NRC Office of Investigations Report No. 1-2014-
25 018 (Feb. 11, 2016), Petition Exhibit I at p.1 (noting that the NRC investigation began
April 29, 2014 and was completed September 15, 2015).

26 ⁴⁷ See Confirmatory Order, 81 Fed. Reg. 73144 (Oct 24, 2016), Petition Exhibit K at p.3.

27 ⁴⁸ *Id.* at 1.

28 ⁴⁹ *Id.* at 3-7.

1 hearing within 30 days of the Order's issuance.⁵⁰ But rather than intervene in the process
2 at the appropriate time, Petitioner waited eight months to file this Petition and request that
3 the NRC reopen a completed and properly closed investigation.⁵¹ Petitioner gives no
4 explanation as to why it was unable to file a timely request for intervention. Petitioner's
5 disregard of other available procedural mechanisms to raise the untimely arguments it
6 now attempts to make provides further justification for NRC's rejection of the Petition.⁵²

7 Indeed, Petitioner acknowledges that the NRC has already investigated the
8 allegations in the Petition, but nonetheless claims that the investigation was "inadequate"
9 because Petitioner disagrees with the methodology and conclusions of the NRC's
10 investigation.⁵³ In support of this assertion, Petitioner cites the declarations of Elbert
11 Bowers, Susan Andrews, and Archie Jackson.⁵⁴ However, the Declarants' statements do
12 not support Petitioner's claims. The cited portion of Bowers' declaration alleges only that
13 Bowers "became aware" *after he left HPNS* that there was a violation of soil sampling
14 procedures. Jackson's and Andrews' declarations state that they felt the NRC did not
15 adequately address their concerns, but there is nothing to substantiate this assertion.⁵⁵
16 Moreover, Bowers left the site in January 2011, before any sampling issues were
17 identified or believed to have occurred.⁵⁶ And neither Andrews nor Jackson were involved
18 with cleanup at specific locations, nor were they part of the sample collection teams. In

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20 ⁵⁰ 10 C.F.R. §§ 2.202, 2.309.

21 ⁵¹ See Petition at p. 40, ln. 9-11.

22 ⁵² See MD 8.11 Part III(C)(iii) (NRC staff will review a petition if it meets specified criteria
23 including, "[t]here is no proceeding available in which the petitioner is or could be a party
and through which the petitioner's concerns could be addressed").

24 ⁵³ See Petition at p.3, ln. 10-14.

25 ⁵⁴ *Id.* at p.3 n.7.

26 ⁵⁵ See Declaration of Susan Andrews ("Andrews Decl.") at ¶¶ 56-59; Declaration of
Archie Jackson ("Jackson Decl.") at ¶ 21.

27 ⁵⁶ See Confirmatory Order, 81 Fed. Reg. 73144 (Oct 24, 2016), Petition Exhibit K at p.1
28 (noting that a single violation of TtEC's license conditions occurred sometime between
November 11, 2011 and June 4, 2012).

1 truth, the NRC performed multiple investigations that addressed the allegations made
2 regarding TtEC's work at the Site, primarily by the same former employees whose
3 declarations now support the Petition.

4 **1. The NRC investigated Elbert Bowers' allegations, beginning in**
5 **2011, and found insufficient evidence to substantiate his claims.**

6 Following a complaint filed by Bowers, the NRC initiated an investigation into
7 whether Bowers was discriminated against for raising safety concerns.⁵⁷ Bowers alleged
8 that TtEC management removed him from HPNS because he was strictly enforcing
9 safety rules at the Site—the same allegations contained in his declaration in support of the
10 Petition.⁵⁸ However, the NRC found insufficient evidence to substantiate Bowers'
11 claims.⁵⁹

12 The limited issues that Bowers claims to have personal knowledge of do not justify
13 a new investigation, much less revocation of TtEC's license. Bowers repeatedly asserts
14 that *he was unaware of any fraud at the Site*, and has no personal knowledge of any
15 purported fraud concerning sampling, COC forms, or building scans.⁶⁰ Bowers alleges
16 only that he has "since been informed" that there was an alert system in place to prevent
17 his knowledge of any "obvious cheating."⁶¹ However, neither Bowers nor any other
18 Declarant has explained how this system operated or what exactly it was designed to
19 prevent Bowers from witnessing. Bowers is merely speculating as to alleged conduct—an
20 "alert system"—of which he has no first-hand knowledge or credible evidence.

21 Bowers also states that he caught and corrected a number of health and safety
22 issues at the Site, which is precisely what he was hired to do. For example, Bowers

23 _____
24 ⁵⁷ See Letter from NRC to Albert Perry, NRC Office of Investigations Case No. 1-2012-
002 (May 29, 2013) at p.1, attached at Exhibit 3.

25 ⁵⁸ See *generally* Declaration of Bert Bowers ("Bowers Decl.") at ¶¶ 7, 10, 15.

26 ⁵⁹ *Id.*

27 ⁶⁰ See *e.g.*, Bowers Decl. at ¶¶ 6, 12, 13, 21, 24, 74-78.

28 ⁶¹ *Id.* at ¶ 9.

1 identifies a number of instances in which he found unsecured areas or improper
2 controlled area postings.⁶² The fact that Bowers was doing his job to identify and correct
3 these relatively routine issues does not warrant further NRC investigation. Nowhere in
4 Bowers' declaration does he state that he made any complaint to the NRC, prior to
5 leaving TtEC, about safety concerns he had at the Site. Nor does he indicate he brought
6 any concerns about safety issues to the attention of TtEC management. There is no
7 substance to Bowers' allegations, and the PRB should disregard them.

8 **2. The NRC investigated the allegations made by Susan Andrews,**
9 **Archie Jackson, and Arthur Jahr, beginning in 2012, and found**
insufficient evidence to substantiate their claims.

10 Susan Andrews' 2012 NRC complaint identified the same issues as those that
11 allegedly support the Petition: unqualified and/or untrained workers, falsification of COC
12 forms, inadequate employee training and/or certification, a culture where production took
13 precedence over safety, inaccurate data input, incorrect instrument calibration, failure to
14 follow procedures for frisking when entering or exiting an identified contaminated area,
15 and failure to follow procedures when eating or drinking in a posted contaminated area.⁶³

16 Based on discussions TtEC had with the NRC during the course of the
17 investigations, TtEC is aware that the concerns raised by Archie Jackson and Arthur Jahr
18 were substantially identical to those raised by Andrews in 2012.⁶⁴ In each case, the NRC
19 found there was insufficient evidence to substantiate the claims made by these
20 individuals. The Andrews, Jackson, and Jahr declarations repeat the same allegations
21 that the NRC investigated and found to be without merit. Thus, the NRC's prior, thorough
22 investigation of these allegations requires the NRC to reject the Petition.

23

24

25

⁶² *Id.* at ¶¶ 56-59.

26

⁶³ See Letter from NRC to Susan Andrews (Jan. 5, 2012), attached at Exhibit 3.

27

⁶⁴ See Letter from NRC to Albert Perry, NRC Office of Investigations Case Nos. 1-2012-019 and 1-2012-037 (Dec. 6, 2013); Letter from NRC to Albert Perry, NRC Office of Investigations Case No. 1-2012-032 (Jul. 8, 2013), attached at Exhibit 3.

28

1 **3. Anthony Smith's allegations are substantially similar to those**
2 **alleged by the other Declarants, all of which were thoroughly**
3 **investigated by the NRC.**

4 While Anthony Smith did not previously file a complaint with the NRC, his
5 allegations are essentially identical to those investigated by the NRC, which requires the
6 NRC to deny the Petition. Smith alleges that he witnessed untrained or unqualified
7 workers at HPNS, falsification of soil sampling, falsification of chain of custody
8 documentation, fraudulent building surveys conducted, and data manipulation at the
9 Site.⁶⁵ The NRC's investigation considered similar allegations made by the other
10 Declarants, as explained above. Smith's allegations add nothing new, and certainly not
11 "significant new information" that would justify acceptance of the Petition.

12 Smith's allegations are also unsubstantiated, and in many instances verifiably
13 false, as discussed in Section V. A., below. The NRC should not reopen its investigation
14 based on Smith's claims, because they do not present significant, new, credible
15 information, as is required for acceptance of the Petition under 10 C.F.R. § 2.206.

16 **4. The NRC has already investigated the Declarants' allegations of**
17 **unqualified and untrained employees at HPNS.**

18 In addition to the allegations discussed above, Petitioners make allegations about
19 the qualifications and conduct of Health Physics Specialist Jane Taylor and Radiological
20 Data Analyst Thorpe Miller.⁶⁶ TtEC understands that the NRC investigated these claims
21 (in Case Nos. 1-2012-002, 1-2012-019, 1-2012-032, and 1-2012-037) based upon
22 multiple conversations and inquiries from the NRC related to these allegations. The NRC
23 took no enforcement action against TtEC in response to these claims.⁶⁷

24 The reasons for the NRC's inaction are apparent from the flimsiness of Petitioner's

25 ⁶⁵ See Declaration of Anthony Smith ("Smith Decl.") at ¶¶ 4, 7.

26 ⁶⁶ See Petition at p. 26, ln. 7 to p.28, ln. 17.

27 ⁶⁷ See Letters from NRC to Albert Perry, NRC Office of Investigations Case Nos. 1-2012-
28 002 (May 29, 2013); 1-2012-032 (July 8, 2013); and 1-2012-019 and 1-2012-037 (Dec. 6,
2013), attached at Exhibit 3.

1 current allegations. Petitioner's assertion that Taylor and Miller "saw to it that the large
2 majority of soil excavated from the sewer trenches was not treated as radioactively
3 contaminated soil" is based on a single example of an area where a low percentage of
4 contaminated soil was identified and removed.⁶⁸ The absence of significant
5 contamination in this area is the most likely explanation for this example, and cherry-
6 picking the results of one excavation among the hundreds of trenches and excavations
7 investigated and remediated at the Site does not constitute evidence of "fraud or
8 incompetence."

9 Petitioner also ignores the fact that Taylor was hired by NWE, not by TtEC. TtEC
10 did not have control over internal personnel hiring decisions made by NWE. In fact,
11 Bowers was the Radiation Safety Officer Representative at NWE at the time Taylor was
12 hired,⁶⁹ and presumably would have been involved in her initial hiring. At the time TtEC
13 invoked its license in March 2009, Taylor had been working at HPNS for three years and
14 was more than sufficiently qualified for the position she held at that time—notwithstanding
15 Petitioner's stated concerns about NWE's hiring practices.

16 Likewise, Thorpe Miller had adequate experience for his role at HPNS. Because
17 Miller is the son of Laurie Lowman, who worked at the Navy RASO, TtEC requested that
18 the Navy review whether any conflict of interest existed in hiring Miller. The Navy
19 determined that there was no conflict, and TtEC relied on the Navy's interpretation.⁷⁰
20 Miller's work managing the database onsite was valued, and TtEC followed the Navy's
21 direction to minimize the appearance of a conflict when his employment by TtEC was
22 questioned by competing contractors.⁷¹

23 In any event, Petitioner's spurious allegations regarding Taylor's and Thorpe's
24 employment at the Site have already been investigated by the NRC. There is no new,
25

26 ⁶⁸ Petition at p.28, ln. 25 to p.29, ln. 4.

27 ⁶⁹ See Bowers Decl. at ¶ 4.

28 ⁷⁰ See Email from Andrew Bolt to Erik Abkemeir *et al.*, Bowers Decl., Exhibit 3 at p. 1.

⁷¹ *Id.*

1 significant information in these allegations, or any of the other allegations made by
2 Petitioner, that would justify the NRC's acceptance of the Petition. Section 2.206 requires
3 the NRC to reject the Petition on that basis.

4 **V. THE SMITH DECLARATION AND THE NAVY'S DRAFT DATA EVALUATION**
5 **REPORTS DO NOT CONTAIN FACTS THAT ARE "CREDIBLE AND**
6 **SUFFICIENT TO WARRANT FURTHER INQUIRY."**

7 **A. Anthony Smith is a criminal who has demonstrated his willingness to**
8 **lie to advance his own financial interests.**

9 As discussed above, Anthony Smith's declaration in support of the Petition either
10 repeats or repackages allegations that have been previously investigated by the NRC.
11 But even if Smith's declaration raised new information, Petitioner must still provide
12 "supporting facts" that are "credible and sufficient to warrant further inquiry."⁷² The
13 allegations in Smith's declaration are either demonstrably false or so implausible as to be
14 completely lacking in credibility.

15 **1. Smith's claims about Building 351A are verifiably false.**

16 Smith alleges that he and Josh Hooper were instructed by HPNS Project Manager
17 Bill Dougherty to destroy highly contaminated radioactive samples taken from Building
18 351A in order to cut costs and avoid further costly remediation.⁷³ Smith also alleges that
19 he and Hooper were instructed to take new samples from the areas in the building
20 crawlspace known to be clean.⁷⁴ These claims are inconsistent with uncontroverted
21 evidence and are demonstrably false.

22 In fact, multiple rounds of remediation and resampling were conducted at Building
23 351A, beginning in April 2008 and continuing into January 2009.⁷⁵ Smith alleges that
24 TtEC Project Manager Bill Dougherty was motivated by a desire to avoid the expense of

25 ⁷² MD 8.11, Part III(C)(1)(a)(ii).

26 ⁷³ Smith Decl. at ¶ 10.

27 ⁷⁴ *Id.* at ¶¶ 10-11.

28 ⁷⁵ See Portions of Building 351A Logbook, attached as Exhibit 4.

1 renting a vacuum truck to remediate. However, TtEC did hire an independent
2 subcontractor to remediate Building 351A using a vacuum truck, not once but twice—in
3 both October and December 2008.⁷⁶ This evidence contradicts Smith's allegation that
4 Dougherty did not want to rent a vacuum truck. Following the initial remediation, ten
5 samples were determined to be above the release criterion, requiring a second round of
6 vacuum remediation and sampling, which was conducted in December 2008.⁷⁷
7 Confirmatory sampling was conducted after each round of remediation. Final status
8 survey samples demonstrated that remediation goals were met.⁷⁸

9 Even more implausible is Smith's allegation that Dougherty instructed Hooper and
10 him to "destroy" the soil samples and "any related documentation," after laboratory test
11 results showed that the samples had "some of the highest radioactive readings ever seen
12 on the Hunters Point site."⁷⁹ This allegation assumes, without explanation, that Smith and
13 Hooper had access to the samples after they were turned over to the laboratory, and the
14 laboratory results after they were produced by the laboratory.⁸⁰ In fact, once samples
15 were turned over to the lab, they were maintained in a secure area, which was
16 inaccessible to the Radiation Control Technicians (Smith and Hooper included). But even
17 if Smith or Hooper could have re-gained access to the physical samples after the lab
18 obtained them, copies of the chain of custody forms and electronic records of the
19 sampling data would remain in the lab's files.

20 Smith's allegation that he was able to identify clean soil from areas "marked with
21

22 _____
23 ⁷⁶ See Sterling Environmental Corporation Invoices, attached as Exhibit 5.

24 ⁷⁷ See Final Status Survey Results, Bldg. 351A at 5-3 and 5-4 (ECSD-3211-0018-0009),
attached as Exhibit 6.

25 ⁷⁸ *Id.*

26 ⁷⁹ Smith Decl. at ¶ 10.

27 ⁸⁰ Logbook records demonstrate that samples were gathered and "turned in" following the
28 completion of the removal of contaminated soil in Building 351A. See Portions of Building
351A Logbook, attached as Exhibit 4.

1 flags"⁸¹ is also inconsistent with protocols used at the Site. Site engineers determined
2 random sampling locations by use of an EPA-approved software program, and then
3 precisely marked them in the field. Determining whether soil was clean required lab
4 sampling. Smith does not allege that he had access to the location software or
5 knowledge of the engineer's field markings.

6 Finally, although Smith claims that TtEC management was attempting to avoid
7 additional remediation to save costs, there was no profit motive for faking the results of
8 this sampling. The work was performed under a cost reimbursable contract with the
9 Navy, with billing of actual costs allowed on a monthly basis. There was no reason for
10 TtEC management to avoid the required remediation.

11 Given these facts, the only plausible conclusion is that Smith's statements
12 regarding Building 351A are fabricated.

13 **2. Smith's claims regarding the Parcel A sample are also**
14 **demonstrably false.**

15 Smith asserts that in 2009 he was instructed to collect a sample at Parcel A and
16 the following morning was instructed to put it back because it was "hot."⁸² Smith alleges
17 that the sample showed a cesium-137 (Cs-137) concentration of 2-3 picocuries per gram
18 (pCi/g).⁸³

19 This sample was never taken. 9,649 samples from the Site were collected and
20 analyzed in 2009, and of those samples, only 183 identified Cs-137 activities above the
21 release criterion. The highest concentration measured in 2009 was 1.0335 pCi/g.
22 Moreover, none of the samples taken in 2009 were taken in the area along the Parcel A
23 fence line that is described in the Smith Declaration.

24 Smith's allegations are also inconsistent with management practices at the Site.
25

26 _____
27 ⁸¹ Smith Decl. at ¶ 11.

28 ⁸² See Smith Decl. at ¶¶ 12-13.

⁸³ See *id.* at ¶ 13.

1 TtEC management would have immediately known of a sampling result that had such a
2 high concentration of Cs-137. Such an unexpectedly high concentration would have
3 triggered a report to management immediately, as it would have required revising the
4 scope of work for Parcel A. There is no conceivable way that Smith could have submitted
5 a single sample for lab testing, and then retrieved and destroyed it—all outside of
6 established Site protocols—without anyone in the lab or management being informed of
7 such an abnormal sampling result. Yet after multiple investigations by the Navy and the
8 NRC, there is nothing to suggest that anyone onsite was notified or aware of any such
9 sample.

10 Finally, Smith claims to have been instructed to collect a single sample to
11 determine background radiation levels.⁸⁴ However, taking a single sample would have
12 been completely contrary to established site protocols. Single samples are not
13 representative of background levels due to statistical variations; collecting a large enough
14 set is critical for accurate analysis (typically 20 samples). Smith would not have been
15 instructed to collect a single sample to determine background radiation levels as he
16 claims.

17 Despite the utter lack of plausibility of Smith's allegations, the California
18 Department of Public Health ("CDPH") is currently performing radiological gamma
19 scanning surveys of Parcel A-1 to ensure there is no risk to the public. Initial scanning
20 reports demonstrate that there is no contamination or risk to the public, and no evidence
21 of elevated concentrations of Cs-137.⁸⁵ Final data analysis and reporting is expected in
22

23 ⁸⁴ Smith Decl. at ¶ 12.

24 ⁸⁵ California Department of Public Health, Radiation Health and Safety Scanning Survey:
25 Progress Update No.'s 1-8 (July 20 and 27, Aug. 3, 10, 17, 24 and 31, and Sept. 13,
26 2018), *available at* [https://www.cdph.ca.gov/Programs/CEH/DRSEM/Pages/RHB-
27 Environment/Hunters-Point-Naval-Shipyard-Parcel-A-1-Survey.aspx](https://www.cdph.ca.gov/Programs/CEH/DRSEM/Pages/RHB-Environment/Hunters-Point-Naval-Shipyard-Parcel-A-1-Survey.aspx), attached at Exhibit
28 7. CDPH Progress Update No. 8 reported the discovery of a single radium deck marker
that posed no risk to the residents living in the area. See Progress Update No. 8 at p. 1
("Radiation readings before removal indicate that there would not have been any health
or safety hazard to anyone who happened to be at that spot previously.").

1 the coming months.⁸⁶ The CDPH's sampling will undoubtedly confirm that Smith is lying,
2 and that the story he tells about finding elevated Cs-137 concentrations on Parcel A is
3 fictional.

4 **3. Petitioner's allegations relating to fraudulent building scans and**
5 **data reporting rely on Smith's unreliable and unsubstantiated**
6 **claims.**

7 Petitioner's allegations relating to improper building scans and building survey
8 data reporting also rely on the Declaration of Anthony Smith.⁸⁷ Smith alleges that he and
9 other technicians at the Site were instructed to "just get numbers," and that they did so by
10 holding the radiation detector in the same spot or putting it down in one place for up to
11 thirty minutes while readings were recorded.⁸⁸ Smith also asserts that building survey
12 data was altered to "avoid additional radiological remediation work" at the Site, and that
13 other Radiation Control Technicians and Supervisors were aware of the data
14 manipulation.⁸⁹

15 Smith's allegations make no sense. The only reason to put his radiation detector
16 down in one spot and "just get the numbers" would be Smith's own motivation to not
17 perform the repetitive, monotonous action of moving the scanner throughout the building.
18 TtEC managers would have no motivation to pay Smith to sit around generating fake
19 data.

20 With respect to the alleged data alteration, Smith played no role in data entry, as
21 his declaration makes clear. The majority of this work was completed by professionals
22 working in trailers at the Site. Smith would not have been in these areas, nor would he
23 have had knowledge of these tasks. Moreover, the data entry process at the Site required

24 ⁸⁶ California Department of Public Health, *Hunters Point Naval Shipyard –Parcel A-1*
25 *Radiation Survey Request* (July 5, 2018), [https://www.cdph.ca.gov/Programs/CEH/
26 DRSEM/CDPH%20Document%20Library/RHB/Environment/Final%20Hunters%20Point
%20-%20Parcel%20A1%20-%20Summary.pdf](https://www.cdph.ca.gov/Programs/CEH/DRSEM/CDPH%20Document%20Library/RHB/Environment/Final%20Hunters%20Point%20-%20Parcel%20A1%20-%20Summary.pdf).

27 ⁸⁷ *Id.*

28 ⁸⁸ Smith Decl. at ¶ 25.

⁸⁹ *Id.* at ¶¶ 26-27.

1 significant amounts of manual spreadsheet work—which Smith now mischaracterizes,
2 deliberately or otherwise, as intentional data manipulation. His contentions that TtEC
3 managers directed him and others to intentionally falsify building scan data are not
4 credible.

5 **4. Smith's claims regarding falsified chain of custody documents**
6 **are unsupported.**

7 Smith claims that one individual, Tina Rolfe, would fill out COC forms while others
8 were in the field.⁹⁰ While it is possible that some chain of custody information, such as
9 the sample identification numbers, was filled in before sampling was conducted, each
10 sampler was required to sign off on the sample COC before the forms were delivered to
11 the lab. Even if the handwriting on some portions of the COC is different, it does not
12 mean that the COC forms are inaccurate.

13 Additionally, TtEC and the NRC have all investigated claims of falsified soil
14 samples and associated COC documents. Hubbard and Rolfe have admitted to falsifying
15 limited sampling data in 2012, and the disparity in sampling times was identified during
16 the course of these investigations. However, none of these prior investigations
17 determined that there was systemic, rampant fraud in the COC documentation, as Smith
18 falsely alleges.

19 **5. Smith's has no direct knowledge to support his claim that**
20 **contaminated soil was shipped offsite.**

21 Smith alleges that a conveyor system utilized in 2006 resulted in contaminated
22 soils being shipped offsite.⁹¹ Yet, Smith himself admits that he did not work on the
23 conveyor operation.⁹² Smith's allegations that the speed was increased and monitors
24
25

26 ⁹⁰ *Id.* at ¶¶ 21-23.

27 ⁹¹ Smith Decl. at ¶¶ 28-32.

28 ⁹² *Id.* at ¶ 29.

1 were silenced are based entirely on rumors that Smith "learned" while onsite;⁹³ he has no
2 direct knowledge of any impropriety.

3 TtEC identified a limited issue with the conveyor in 2006, when NWE's license was
4 active at the Site. TtEC investigated, identified the issue, remedied the problem, and
5 ensured that all impacted soil was appropriately rescanned.⁹⁴ Smith's claims demonstrate
6 his lack of understanding of Site remediation protocols, and his willingness to make false
7 allegations based on speculation and hearsay.

8 **6. Anthony Smith is currently being prosecuted on felony charges**
9 **and has financial problems that explain why he is willing to**
10 **make false statements to the NRC.**

11 Apart from the implausible nature of his allegations, Smith is simply not a credible
12 witness. Smith is an abusive person and is currently being prosecuted for assault,
13 battery, family violence, and terroristic threats, arising from his threats to kill his former
14 girlfriend.⁹⁵ In addition, Smith has had two contempt of court orders filed against him,⁹⁶
15 has been cited for operating a vehicle while impaired,⁹⁷ and failed to pay debts owed to a
16 creditor, resulting in a default judgment against him.⁹⁸

17 Smith has apparently chosen to falsify evidence to support legal action he hopes
18 will result in a financial windfall for himself, to allow him to escape from his financial
19 troubles. His attorney David Anton is also familiar with the falsification of evidence,
20 having been suspended by the California State Bar after he "admitted he fabricated
21 evidence" in a wrongful termination case filed in federal court.⁹⁹ The NRC should not

22 ⁹³ See *id.*

23 ⁹⁴ See explanation above at footnote 38.

24 ⁹⁵ *State of Georgia v. Anthony James Smith*, Union County Superior Court Case No.
25 2017-CR-221-SG, attached at Exhibit 8.

26 ⁹⁶ See *Smith v. Smith*, Contempt Orders 2002 and 2003, attached at Exhibit 8.

27 ⁹⁷ See e.g., A. Smith Citation for DUI, attached at Exhibit 8.

28 ⁹⁸ See Default Judgment, attached at Exhibit 8.

⁹⁹ See Attorney Licensee Profile, David C. Anton, State Bar No. 94852, available at
<http://members.calbar.ca.gov/fal/Licensee/Detail/94852>.

1 spend taxpayer resources further investigating false allegations advanced by a criminal
2 and an admitted fraudster.

3 **B. The Draft Navy Data Evaluation Reports are scientifically unsound,**
4 **and in any event do not find actual evidence of data manipulation.**

5 The Draft Data Evaluation Reports ("Draft Reports") discussed in Petitioner's
6 supplemental pleadings are not new, credible evidence that would justify accepting the
7 Petition.

8 First, even if taken at face value, the Draft Reports only tentatively conclude that
9 there is "potential evidence" of "potential data manipulation." Whatever the term "potential
10 evidence" means, it is not specific, credible evidence that would support reopening the
11 NRC's closed investigation of TtEC.

12 Second, and more fundamentally, the methodology of the Draft Reports is deeply
13 flawed, and the Reports' conclusions are not based on sound science. The Draft Reports
14 do not base their analysis on the contractual and regulatory requirements that governed
15 TtEC's work at HPNS. Rather, they rely on arbitrary logic tests, inappropriate statistical
16 analyses, and misleading graphics, all of which are misapplied and misinterpreted to
17 incorrectly identify areas of potential data manipulation. The misuse of the logic tests,
18 statistical analyses, and misleading graphics results in a large percentage of HPNS data
19 being incorrectly identified as potentially suspect. In addition, the Draft Reports do not
20 consider alternative scientific explanations for any potential data issues, such as the well-
21 documented, highly variable soil conditions at HPNS or sensitivity to background
22 radiation levels.

23 The "logic tests" used in the Draft Reports impose a series of arbitrary
24 requirements on the conditions under which samples are collected (e.g., the relative
25 timing of sample collection and analysis) and identify any deviation from those arbitrary
26 requirements as evidence or "potential evidence" of "potential data manipulation."
27 However, the logic tests have no foundation in the contractual requirements for work at
28 the Site, nor do they have any scientific or technical foundation. For example, re-analysis

1 of samples according to the laboratory Standard Operating Procedures approved by the
2 Navy, which is part of ordinary field sampling or laboratory operations, results in failure of
3 at least one logic test used in the Draft Reports. Moreover, the Draft Reports fail to
4 account for benign or innocent errors in data and information processing that are
5 unavoidable in large scale projects. In addition, the Draft Reports simply assume that any
6 location downgradient from a contaminated area is potentially suspect, without any actual
7 evidence of irregularities in the data or in data collection procedures. Failure to meet the
8 requirements imposed by these arbitrary logic tests is not evidence of data irregularities.

9 The "statistical tests" used in the Draft Reports are also flawed, and in some
10 cases, they are not actually statistical tests at all. For example, the defects in the Draft
11 Reports' statistical analysis include the following:

- 12 ▪ The Draft Reports' use of the Kolmogorov-Smirnov ("KS") test to identify
13 "statistically different" populations of data ignores natural heterogeneity in
14 soils at the Site and differences in conditions under which samples were
15 collected.
- 16 ▪ The application of Benford's Law tests to data with an insufficiently wide
17 range of values (e.g., Ac-228 data) incorrectly identifies hundreds of data
18 points as potentially suspect.
- 19 ▪ The Draft Reports identify data as suspect based on information that is
20 intended solely to trigger further investigation (e.g., scan surveys), and not
21 based on release criteria established by the Navy and the EPA, contrary to
22 established NRC guidance.¹⁰⁰
- 23 ▪ The hierarchical "clustering" analysis performed in the Draft Reports is not a
24 statistical test at all, but rather, a subjective approach to data assessment.
- 25 ▪ The confidence intervals in the Draft Reports are either computed

27 ¹⁰⁰ NRC *et al.*, Multi-Agency Radiation Survey and Site Investigation Manual
28 ("MARSSIM") (Aug. 2000), available at https://www.epa.gov/sites/production/files/2017-09/documents/marssim_manual_rev1.pdf.

1 incorrectly or based on arbitrary unstated assumptions.

- 2 ▪ The Draft Reports do not provide any information about the procedures
3 used to identify "outliers" in the dataset or to flag unusual data, and the
4 large number of outliers identified in the Draft Reports strongly suggest the
5 methodology generated results that are meaningless. Further, the flagging
6 of outlying values is inconsistent, and is inappropriately based on a
7 univariate as opposed to a multivariate analysis.

8 The misapplication of these statistical tests results in a large percentage of data
9 being incorrectly identified as potentially suspect. Moreover, even where statistical
10 differences may be present, the Draft Reports do not consider alternative scientific
11 explanations for the differences, such as the highly variable soil conditions, or variations
12 in background radiation levels (which are in some cases very close to the remediation
13 goals at the Site). Thus, it is clear that the Draft Reports do not provide an objective
14 analysis of the data collected at HPNS, and they are certainly not credible, new evidence
15 of alleged license violations that would support accepting the Petition under 10 C.F.R.
16 § 2.206.

17 **VI. CONCLUSION**

18 The NRC should reject the Petition because Petitioner has failed to meet the
19 criteria for acceptance set forth in 10 C.F.R. § 2.206. Petitioner has not presented
20 significant new information or demonstrated why the NRC's prior investigations are
21 insufficient to address Petitioner's concerns. The evidence that Petitioner submitted in
22 support of its allegations of fraudulent conduct are either demonstrably false or utterly
23 lacking in credibility. There is no indication that upper level TtEC management had any
24 knowledge of the admitted or alleged falsifications that the NRC previously investigated.
25 TtEC has never knowingly provided false data to the NRC and has fully complied with the
26 confirmatory orders issued by the NRC following its investigation. Moreover, the EPA, the
27 Navy, and state and local officials all agree that the Site is safe and there is no health risk

28

1 to the public.¹⁰¹ For these reasons, Petitioner has failed to present credible, new
2 information justifying a re-opening of the NRC's investigations, and the NRC should deny
3 the Petition.

4 Dated: September 19, 2018

5 By: 

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16
17
18
19 ¹⁰¹ See Navy, Fact Sheet Hunters Point Naval Shipyard Radiological Data Review (2017)
20 at p. 2 ("Investigations show that people who live, work, and visit HPNS and adjacent
21 properties are safe."), available at [https://www.bracpmo.navy.mil/content/dam/bracpmo/
22 california/former naval shipyard hunters point/pdfs/restoration advisory board/2017Co
23 mmunityInformationalMeetings/HP_201702_FactSheet_Rad.pdf](https://www.bracpmo.navy.mil/content/dam/bracpmo/california/former%20naval%20shipyard%20hunters%20point/pdfs/restoration%20advisory%20board/2017CommunityInformationalMeetings/HP_201702_FactSheet_Rad.pdf); EPA, Cleanup
24 Activities, Treasure Island Naval Station-Hunters Point Annex, San Francisco, CA ("The
25 most recent five-year review concluded that response actions at the site are in
26 accordance with the remedy selected by EPA and that the remedy continues to be
27 protective of human health and the environment."), available at [https://cumulis.epa.gov/
28 supercpad/SiteProfiles/index.cfm?fuseaction=second.Cleanup&id=0902722#Done](https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.Cleanup&id=0902722#Done); San
Francisco Office of Community Investment and Infrastructure, Informational
Memorandum Hunters Point Shipyard Environmental Remediation Update; Hunters Point
Shipyard Redevelopment Project Area (Oct. 4, 2016) at p. 2 ("Based on ongoing reviews
of all the available information, the City's DPH continues to conclude there is no
immediate health risk to workers, residents, and artists who currently access the site."),
available at [https://sfocii.org/sites/default/files/Documents/Project%20Areas/HPSY/
RAD/HPS%20-%20CAC%20Info%20Memo%2011102016.pdf](https://sfocii.org/sites/default/files/Documents/Project%20Areas/HPSY/RAD/HPS%20-%20CAC%20Info%20Memo%2011102016.pdf).