



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
1600 EAST LAMAR BOULEVARD
ARLINGTON, TEXAS 76011-4511

December 20, 2018

EA-18-106

Jim Wright, Director of Safety and Health
Terracon Consultants, Inc.
10841 South Ridgeview Road
Olathe, Kansas 66061

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$29,000 AND NRC INSPECTION REPORT 030-32176/2018-002

Dear Mr. Wright:

This letter refers to the announced inspection conducted on July 12, 2018, at your facility in Olathe, Kansas. The inspection was performed in response to a notification that a portable nuclear gauge had been transported improperly on a public highway in Lee's Summit, Missouri. A final exit briefing was conducted telephonically with you on September 7, 2018, and the details regarding four apparent violations were provided in U.S. Nuclear Regulatory Commission (NRC) Inspection Report 030-32176/2018-002, dated September 17, 2018, NRC's Agencywide Documents Access and Management System (ADAMS) Accession ML18260A187.

In the letter transmitting the inspection report, we provided you with the opportunity to address the apparent violations identified in the report by either attending a predecisional enforcement conference, requesting alternative dispute resolution (ADR), or by providing a written response before we made our final enforcement decision. In a letter dated September 24, 2018, ADAMS Accession ML18305A739, Terracon Consultants, Inc. (Terracon) provided a written response to the apparent violations.

Based on the information developed during the inspection and the information that you provided in your response to the inspection report, dated September 24, 2018, the NRC has determined that four violations of NRC requirements occurred. These violations are cited in Enclosure 1, Notice of Violation and Proposed Imposition of Civil Penalty (Notice), and the circumstances surrounding them are described in detail in the subject inspection report. The violations involved the failure to: (A) use a minimum of two independent physical barriers to secure a portable nuclear gauge from unauthorized removal when not under the control and constant surveillance of the licensee; (B) maintain constant surveillance of a portable nuclear gauge that was not in storage; (C) block and brace a portable nuclear gauge during transportation on public highways; and (D) transport a portable nuclear gauge in its proper shipping container.

The NRC considers violations A and B above to be significant violations. Although no actual safety consequences were identified, these two violations are significant because of the potential consequence of a lost or damaged portable nuclear gauge when a technician failed to secure the gauge in the back of a pickup truck with any physical controls, and it remained in that condition for approximately 30 minutes, while the technician was inside of the cab of the truck

doing paperwork. The technician subsequently drove off of the work site with the portable nuclear gauge still in an unsecured position on the tailgate of the truck for approximately 6 miles. Therefore, violations A and B are categorized collectively in accordance with the NRC Enforcement Policy as a Severity Level III problem. The NRC considers violations C and D above to be low safety significant violations and categorized them in accordance with the NRC Enforcement Policy at Severity Level IV.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$14,500 is considered for a Severity Level III problem.

Because your facility has been the subject of escalated enforcement actions within the last 2 years, a Severity Level III violation was issued on November 15, 2017 (EA-17-079), the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the NRC Enforcement Policy. The NRC has determined that *Identification* credit is not warranted because the violations were self-revealed through an event where the portable nuclear gauge case fell out of the back of a pickup truck with the portable nuclear gauge remaining in an unsecured position on the tailgate of the truck.

Based on your September 24, 2018, letter, the NRC noted that your corrective actions were similar to the corrective actions from the prior enforcement action (EA-17-079), as documented in your letter dated October 10, 2017 (ADAMS Accession ML17289A218), which were not fully effective in preventing this event and other events throughout the company since October 2017. In both your October 10, 2017, and your September 24, 2018, letters you focused on disciplinary action against the individual involved and subsequent retraining of the individual, discussing the circumstances with all Terracon radiation safety officers and managers where gauge safety was re-emphasized, and discussing gauge safety with gauge users. While these types of actions are appropriate, the fact that these types of violations recurred indicates that prior corrective actions were not fully effective.

For example, the NRC noted that your September 24, 2018, letter did not discuss nor consider the common causes from company-wide events over the past year (more than just these two events involving NRC's escalated enforcement) and did not develop corrective actions from the common causes. In addition, we noted that your corrective actions did not contain new or additional management oversight activities at job sites or other means to provide oversight to workers out in the field to ensure Terracon employees were following Terracon's procedures and appropriate regulatory requirements. Therefore, the NRC has determined that your corrective actions were not sufficiently comprehensive to provide a reasonable assurance that the violations would not recur and that Terracon was not deserving of corrective action credit.

Since both *Identification* credit and *Corrective Action* credit are not warranted, the Enforcement Policy provides for a civil penalty that is twice the amount of the base civil penalty.

Therefore, to emphasize the importance of the control of licensed material, identification and comprehensive correction of violations, and in recognition of your previous escalated enforcement action, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$29,000 for the Severity Level III problem. In addition, issuance of this Notice constitutes an escalated enforcement action that may subject you to increased inspection effort.

If you disagree with this enforcement sanction, you may deny the violation, as described in the Notice, or you may request ADR with the NRC in an attempt to resolve this issue. Alternative dispute resolution is a general term encompassing various techniques for resolving conflicts using a neutral third party. The technique that the NRC has decided to employ is mediation. Mediation is a voluntary, informal process in which a trained neutral mediator works with parties to help them reach resolution. If the parties agree to use ADR, they select a mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions. Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues. Additional information concerning the NRC's ADR program can be found in Enclosure 3 and at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>.

The Institute on Conflict Resolution at Cornell University has agreed to facilitate the NRC's program as a neutral third party. If you are interested in pursuing this issue through the ADR program, please contact: (1) the Institute on Conflict Resolution at 877-733-9415, and (2) Mr. James Thompson at 817-200-1538 within 10 days of the date of this letter. You may also contact the Institute on Conflict Resolution for additional information about ADR. Your submitted signed agreement to mediate using the NRC ADR program will stay the 30-day time period for payment of the civil penalties and the required written response, as identified in the enclosed Notice, until the ADR process is completed.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. If you have additional information that you believe the NRC should consider, you should provide it in your response to the Notice. In particular, your response should discuss any additional corrective actions you have taken or planned to take to provide a reasonable assurance that the violations will not recur. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice and Procedure," a copy of this letter, its enclosures, and your response will be made available electronically for public inspection in the NRC Public Document Room and from the NRC's ADAMS, accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy or proprietary information so that it can be made available to the public without redaction. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions>.

If you have any questions concerning this matter, please contact Mr. James Thompson, Chief, Nuclear Materials Licensing and Inspection Branch, of my staff at 817-200-1538.

Sincerely,



Kriss M. Kennedy
Regional Administrator

Docket No. 030-32176
License No. 15-27070-01

Enclosures (see next page)

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalty
2. NUREG/BR-0254, Payment Methods
3. NUREG/BR-0317, Enforcement Alternative Dispute Resolution Program

cc: w/Enclosure 1:

Kimberly S. Steves, Chief

State of Kansas Radiation Control Program

John Langston, Director

State of Missouri Radiation Control Program

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Terracon Consultants, Inc.
Olathe, Kansas

Docket No.: 030-32176
License No.: 15-27070-01
EA-18-106

During an NRC inspection conducted from July 12 to September 7, 2018, four violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violations and associated civil penalty are set forth below:

I. Violations Assessed a Civil Penalty

- A. 10 CFR 30.34(i) requires, in part, that each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

Contrary to the above, on June 28, 2018, the licensee failed to use a minimum of two independent physical controls that form tangible barriers to secure a portable gauge from unauthorized removal when not under the control and constant surveillance of the licensee. Specifically, a licensee technician failed to secure the gauge in the back of a pickup truck with any physical controls, and it remained in that condition for approximately 30 minutes, while the technician was inside of the cab of the truck doing paperwork. The technician subsequently drove off of the work site with the portable nuclear gauge still in an unsecured position on the tailgate of the pickup truck for approximately 6 miles.

- B. 10 CFR 20.1802 requires, in part, that the licensee shall control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

Contrary to the above, on June 28, 2018, the licensee failed to control and maintain constant surveillance of licensed material that was in a controlled or unrestricted area and was not in storage. Specifically, a licensee technician placed a portable nuclear gauge on the tailgate of a pickup truck at the conclusion of the work and conducted paperwork inside of the truck for approximately 30 minutes, failing to maintain constant surveillance of the gauge. The technician subsequently drove off of the work site with the gauge on the tailgate of the pickup truck in an unsecured and uncontrolled manner.

This is a Severity Level III problem (NRC Enforcement Policy Section 6.3.c.3).
Civil Penalty - \$29,000 (EA-18-106)

II. Violations Not Assessed a Civil Penalty

- C. 10 CFR 71.5(a) requires, in part, that each licensee who transports licensed material outside the site of usage, as specified in the NRC license, or where transport is on public highways shall comply with the applicable requirements of the U.S. Department of Transportation (DOT) regulations in 49 CFR Parts 171 through 180 appropriate to the mode of transport.

49 CFR 173.448(a) requires, in part, that each shipment of Class 7 (radioactive) materials must be secured to prevent shifting during normal transportation conditions.

Contrary to the above, on June 28, 2018, the licensee failed to secure a shipment of Class 7 (radioactive) materials to prevent shifting during normal transportation conditions. Specifically, a licensee technician failed to secure a portable nuclear gauge to prevent movement when the technician transported the gauge on the tailgate of a pickup truck on public highways.

This is a Severity Level IV violation (NRC Enforcement Policy Section 6.3.d).

- D. Condition 20 of NRC License 15-27070-01, Amendment 49, dated June 25, 2018, states, in part, that the licensee shall conduct its program in accordance with the statements, representations, and procedures contained in the licensee's application dated February 27, 2013. A procedure identified in the application, entitled "Terracon Radiation Safety Program," Section IV-1, "Transportation," states, in part, that nuclear source gauges will only be transported in their DOT-approved shipping containers.

Contrary to the above, on June 28, 2018, the licensee failed to transport a nuclear source gauge (portable nuclear gauge) in its DOT-approved shipping container. Specifically, a licensee technician transported a portable nuclear gauge outside of its DOT Type A shipping container, on the tailgate of a pickup truck, for approximately 6 miles on public highways.

This is a Severity Level IV violation (NRC Enforcement Policy Section 6.3.d).

Pursuant to the provisions of 10 CFR 2.201, Terracon Consultants, Inc., is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a copy to the Document Control Desk, Washington, DC 20555-0001, and the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; (EA-18-106)" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken; and (4) the date when full compliance will be achieved.

Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, the NRC may issue an order or a demand for information requiring you to explain why your license should not be modified, suspended, or revoked or why the NRC should not take other action as may be proper. Consideration may be

given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

You may pay the civil penalty proposed above, in accordance with NUREG/BR-0254 (Enclosure 2) and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice.

Should you fail to answer within 30 days of the date of this Notice, the NRC may issue an order imposing the civil penalty. Should you elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation; (EA-18-106)" and may: (1) deny the violations listed in this Notice, in whole or in part; (2) demonstrate extenuating circumstances; (3) show error in this Notice; or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the response should address the factors addressed in Section 2.3.4 of the Enforcement Policy. Any written answer addressing these factors pursuant to 10 CFR 2.205 should be set forth separately from the statement or explanation provided pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the licensee is directed to the other provisions of 10 CFR 2.205 regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205 to be due, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The responses noted above, i.e., Reply to Notice of Violation, Statement as to payment of civil penalty, and Answer to a Notice of Violation, should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, with a copy to the Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 and the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 1600 E. Lamar Blvd., Arlington, TX 76011-4511.

Your response will be made available electronically for public inspection in the NRC Public Document Room or in 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>. To the extent possible, your response should not include any personal privacy or proprietary information so that it can be made available to the public without redaction.

If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request that such material be withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (e.g., explain why the disclosure of information will create an unwarranted invasion of

personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information).

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days of receipt.

Dated this 20th day of December 2018.

QUESTIONS?

If you have questions, please visit <https://www.nrc.gov> and search for "License Fees."

Questions may also be directed to the NRC Accounts Receivable Help Desk by e-mail at FEES.Resource@nrc.gov, by phone at (301) 415-7554, or by writing to the address below:

U.S. NUCLEAR REGULATORY COMMISSION
OCFO/DOC/ARB
Mail Stop T9-E10
Washington, DC 20555-0001



Payment Methods

U.S. NUCLEAR REGULATORY COMMISSION
OCFO/DOC/ARB
Mail Stop T-9-E10
Washington, DC 20555-0001
PH (301) 415-7554



NUREG/BR-0254, Rev. 8
February 2018



ENCLOSURE 2

APPROVED BY OMB: NO. 3150-0190

Estimated burden per response to comply with this voluntary collection request: 10 minutes. This brochure provides information about available payment methods. Forward comments about to burden estimate to the Records Management Branch (T6-F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the Paperwork Reduction Project (3150-0190), Office of Management and Budget, Washington, DC 20503. If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

NRC accepts the methods described below.

PAYMENT BY AUTOMATED CLEARINGHOUSE

To pay by Automated Clearinghouse / Electronic Data Interchange (ACH/EDI), provide a copy of NRC Form 628 to your financial institution. You may obtain a copy of NRC Form 628 by calling the NRC Accounts Receivable Help Desk at (301) 415-7554.

PAYMENT BY CREDIT CARD

The NRC is currently accepts credit card payments of up to \$24,999.99. For payment by credit card, go to Pay.gov, search for "U.S. Nuclear Regulatory Commission Fees" and enter the required information.

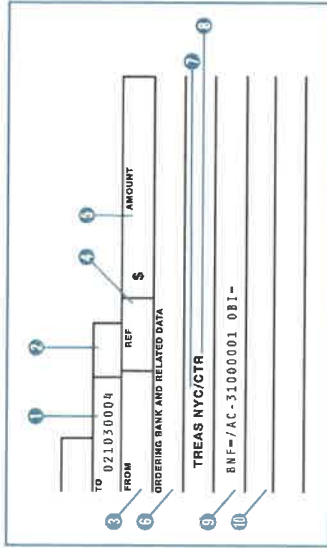


You may also mail or fax NRC Form 629 following the directions on the form. To obtain a copy of NRC Form 629 go to <http://www.nrc.gov> and search for "NRC Form 629" or call the NRC Accounts Receivable Help Desk at (301) 415-7554.

PAYMENT BY FEDWIRE DEPOSIT SYSTEM

The NRC can receive funds through the U.S. Department of the Treasury (Treasury) Fedwire Deposit System. The basic wire message format below complies with the Federal Reserve Board's standard structured third-party format for all electronic funds transfer (EFT) messages.

See the sample EFT message to Treasury below. Each numbered field is described below.



The optimum format for fields 7, 8, 9, and 10 using an 8-digit ALC is as follows:

TREAS NYC/CTR/BNF=AC-31000001 OBI=

The optimum format, shown above, will allow 219 character positions of information following the "OBI=" indicator.

If the licensee's bank is not a member of the Federal Reserve System, the nonmember bank must transfer the necessary information and funds to a member bank, which then must transfer the information and funds to the local Federal Reserve Bank.

For a transfer of funds from local Federal Reserve Banks to be recorded on the same day, the transfer must be received at the New York Federal Reserve Bank by 4 p.m., EST. Otherwise, the deposit will be recorded on the next workday.

PAYMENT BY CHECK

Checks should be made payable to the U.S. Nuclear Regulatory Commission with the invoice number, Enforcement Action number, or other information that identifies the payment, written on the check. Mail the check to the following address:

U.S. Nuclear Regulatory Commission
U.S. Bank
P.O. Box 979051
St. Louis, MO 63197-9000

FedEx or overnight mailings must be delivered to the following address:

U.S. Nuclear Regulatory Commission
U.S. Bank Government Lockbox
SL-MO-C2GL
1005 Convention Plaza
St. Louis, MO 63101

TAXPAYER IDENTIFICATION NUMBER

You must file your Taxpayer Identification Number (TIN) with the NRC. Use NRC Form 531 to provide your TIN. You may obtain NRC Form 531 from the NRC Web site at <http://www.nrc.gov> by searching for "NRC Form 531" or by calling the NRC Accounts Receivable Help Desk at (301) 415-7554.

Mediation Location and Duration

The parties usually hold the mediation at or near one of the NRC's offices. However, the parties may agree on any alternate location. Mediation sessions are usually no longer than 1 day. In some cases, the mediation may take longer with the mutual consent of the parties.

The NRC Mediation Team

The responsible NRC senior manager (i.e., Office Director, Regional Administrator, or his or her designee) will serve as the principal negotiator for the NRC in cases that involve wrongdoing and technical issues. When a case involves discrimination, the Director of the Office of Enforcement will serve as the principal negotiator. The other members of the NRC mediation team typically include an enforcement specialist, an attorney, and a staff representative who is familiar with any technical issues under discussion.

The Confirmatory Order

A CO is a legally binding document that includes the terms of the AIP. The NRC will issue a CO only with the prior written consent of the other party and with a waiver of the right to a hearing. After the entity or the individual has completed the terms of the CO, the NRC will verify that the terms of the CO have been satisfied in a timely manner. Because the CO is legally binding, failing to comply with its terms exposes the entity or individual to additional enforcement action.

Although the substance of the mediation session remains confidential, the details of the settlement will normally be made public via a press release and the publication of the CO in the *Federal Register*.

Timeliness Goals

The timely resolution of issues is one of the goals of the enforcement ADR program. Accordingly, the NRC expects timely progress of a case at each stage of the mediation process. In cases where the parties achieve settlement, the NRC expects to issue a CO within 90 calendar days of the date of the agency's letter offering the ADR option to the other party.

Additional Sources of Information

More information about the NRC's ADR program is available from the following:

- Cornell University's Scheinman Institute on Conflict Resolution
Toll-Free Number: (877) 733-9415
- The NRC's ADR Program Manager in the Office of Enforcement
Toll-Free Number: (800) 368-5642 or (301) 287-9527
- The NRC enforcement ADR program on the agency's Web site at www.nrc.gov/about-nrc/regulatory/enforcement/adr.html



NUREG/BR-0317 Rev. 2
May 2018

The Program

The U.S. Nuclear Regulatory Commission's (NRC's) enforcement alternative dispute resolution (ADR) program, formerly referred to as "post-investigation ADR," provides an amicable process for resolving enforcement matters. It is intended to produce more timely and effective outcomes for the NRC and an entity (e.g., an NRC licensee, certificate holder, or contractor of an NRC licensee or certificate holder) or an individual who is subject to an enforcement action, through mediation.

The NRC established the post-investigation ADR program in 2004. In 2015, the NRC expanded its scope to include certain types of enforcement cases that do not involve an investigation. Accordingly, the name of this program was changed from "post-investigation ADR" to "enforcement ADR."

Enforcement ADR includes two distinct case types: (1) discrimination cases or other wrongdoing and, (2) nonwillful (traditional) enforcement cases with the potential for civil penalties (not including violations associated with findings assessed through the Reactor Oversight Process). For discrimination cases or other wrongdoing, mediation is used after the completion of an investigation by the NRC Office of Investigations.

As long as the enforcement matter is within the scope of the program, the NRC normally offers enforcement ADR at each of the following stages of the enforcement process: (1) before an initial enforcement action, (2) after the initial enforcement action is taken, typically upon issuance of a notice of violation, and (3) when a civil penalty is imposed but before a hearing request.

Mediation is an informal process in which a trained and experienced mediator works with the parties to help them reach a resolution. The parties are the NRC and the entity or individual in the mediation. The mediator focuses the attention of the parties on their needs and interests rather than on their stated positions. Mediation gives the parties an opportunity to discuss issues, clear up misunderstandings, identify creative ways to address issues, find areas of agreement, and resolve their dispute.

Participation in the program is entirely voluntary. The NRC and the entity or the individual may withdraw from the mediation process at any time.

The Program Administrator

The NRC has a contract with the Cornell University Scheinman Institute on Conflict Resolution (Cornell) to serve as the program administrator for the enforcement ADR program. Cornell manages the logistics associated with enforcement ADR, including working with the parties to select a mediator from Cornell's roster of mediators. Cornell uses a network of independent and experienced mediators who help the parties find areas of agreement and settle their dispute.

The Mediator

The mediator is an experienced neutral individual who is mutually selected by the parties. He or she has no stake in the outcome of the mediation or any power to make decisions that may bind either party. The role of the mediator is to facilitate communication between the parties and to provide an environment where the parties can address their differences. The mediator uses consensus-building skills and knowledge of negotiation to help the parties find ways to overcome any misunderstandings and find areas of agreement. The mediator does not act as legal counsel or provide legal advice. Each party should consult an attorney for legal advice as appropriate.

The Mediation Process

Historically, most enforcement ADR mediations have occurred at the first stage of the enforcement process (i.e., before an initial enforcement action). In those cases, the NRC presents the entity or the individual with the opportunity to engage in mediation with the agency before it makes an enforcement decision. If the entity or the individual elects ADR, Cornell will help the NRC and the entity or the individual, jointly select a mediator. After selecting a mediator, the parties, in coordination with the mediator, set a date and place for the mediation. Typically,

the mediator holds a premediation teleconference with the parties to discuss logistics or any special needs.

During the mediation, the mediator will give the parties an opportunity to discuss their views on the issue. Often, the mediator will meet privately with each party to develop a clear understanding of the party's perspective and explore and assess options. Although the mediator does not have any power to make decisions that may bind either party, he or she may ask questions intended to help the parties assess the merits of their positions, help them converse in a respectful atmosphere, and identify potential settlement options.

If the parties reach a settlement agreement during the mediation session, they will typically document the terms of their agreement in writing by developing an agreement in principle (AIP) document. The AIP is not enforceable by either party against the other, but it is the basis on which the NRC drafts a confirmatory order (CO). The CO is a legally binding document used to confirm the commitments made in the AIP. However, if the parties do not reach a settlement agreement, the traditional enforcement process resumes—that is, the enforcement process continues as it would have if the parties had not engaged in ADR.

Confidentiality

Although the terms of an ADR settlement become publicly available through the issuance of the CO, with certain exceptions, the substance of the discussions during the mediation session is confidential. The mediator is prohibited from discussing the mediation proceedings, testifying on anyone's behalf concerning the mediation, or submitting a report on the substance of the discussions.

Cost

The NRC and the entity or individual, equally share the fees and travel expenses of the mediator and any meeting room fees. However, each party is responsible for its own expenses, such as travel, lodging, and legal representation.

NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - \$29,000 AND NRC INSPECTION REPORT 030-32176/2018-002 DATED – December 20, 2018

DISTRIBUTION:

RidsOeMailCenter Resource;	RidsNmssOd Resource;	RidsOgcMailCenter Resource;
RidsSecyMailCenter Resource;	RidsOcaMailCenter Resource;	RidsOigMailCenter Resource;
RidsEdoMailCenter Resource;	EDO_Managers;	RidsOcofoMailCenter Resource;
RidsOiMailCenter Resource;	RidsRgn1MailCenter Resource;	RidsRgn3MailCenter Resource;
R4DNMS_MLIB;	R4_DNMS_ADMIN;	KKennedy, RA
BMaier, ORA	ABoland, OE	DClykowski, ORA
SMorris, DRA	MVasquez, ORA	FPeduzzi, OE
MShaffer, DNMS	JKramer, ORA	SWoods, OE
LHowell, DNMS	CAldredge, ORA	LSreenivas, OE
MHay, DNMS	SKirkwood, ORA	KNorman, OE
JCook, DNMS	JPeralta, OE	JWeaver, ORA
RErickson, DNMS	VDricks, ORA	NHilton, OE
MHerrera, DRMA	MBurgess, NMSS	JWeil, CA
JBowen, OEDO	SHoliday, OE	AMoreno, CA
R4DNMS_MLIB	RSun, NMSS	JGillespie, OGC

S:\RAS\ACES\ENFORCEMENT\EA CASES - OPEN\Terracon EA-18-106\Final Action\NOVCP_EA-18-106_Terracon.docx

ADAMS ACCESSION NUMBER: ML18354A803

SUNSI Review: ADAMS: Non-Publicly Available Non-Sensitive Keyword:
 By: JGK Yes No Publicly Available Sensitive

OFFICE	SES:ACES	TL:ACES	C:MLIB	RC	OE/EB: ES	NMSS
NAME	JKramer	GVasquez	JThompson	DCylkowski	SHoliday	MBurgess
SIGNATURE	/RA/	/RA/	/RA/	/RA/	/RA/	/RA/
DATE	11/28/18	11/30/18	12/10/18	12/12/18	12/11/18	12/13/18
OFFICE	OGC	OE/EB: BC	OE	D:DNMS	RA	
NAME	JGillespie	JPeralta	ABoland	TPruett	KKennedy	
SIGNATURE	/NLO/	/RA/	/RA/ FXP for	/RA/	/RA/	
DATE	12/12/18	12/13/18	12/13/18	12/14/18	12/18/18	

OFFICIAL RECORD COPY