



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

June 26, 2023

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SUBJECT: PETITION UNDER TITLE 10 OF THE *CODE OF FEDERAL REGULATIONS*
PART 2.206 SEEKING ENFORCEMENT ACTION AGAINST TETRA TECH EC,
INCORPORATED

Dear Ms. Kang, Mr. Williams, and Mr. Anton:

This letter is in reference to your petition for Greenaction for Health and Environmental Justice, dated June 28, 2017, as supplemented on January 18, 2018, February 13, 2018, July 23, 2018 (Agencywide Documents Access and Management System [ADAMS] Accession Nos. ML18178A067, ML18178A087, ML18212A267 and ML18212A264, and ML19178A147, respectively). Your petition has been reviewed by the U.S. Nuclear Regulatory Commission (NRC) Office of Nuclear Material Safety and Safeguards pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 2.206 of the Commission's regulations. In your petition, you requested that the NRC revoke Materials License No. 29-31396-01, Docket Number 03938199, issued to Tetra Tech EC, Inc (TtEC), relating to fraudulent activities at the Hunters Point Naval Shipyard (HPNS). You made this request because, as asserted in your petition, employees of TtEC and the radiological subcontractors it directly supervised were involved in at least six types of fraud at the HPNS: "(1) fake sampling, in which soil samples – potentially thousands of them – were reported to have been taken at one location when they were actually taken from another; (2) discarding samples and analytical results when they came back radiologically too "hot" (i.e., above the clean-up standard); (3) altering scanning data to make them appear radiologically acceptable; (4) conducting false building surveys in which certain scan results were fabricated and others were falsified; (5) remediating radioactive material in soil improperly, resulting in potentially radioactively-contaminated soil being shipped offsite as well as being used as backfill for trenches at the Shipyard; and (6) altering Portal Monitor procedures so potentially radioactively-contaminated soil was allowed to be shipped offsite for commercial purposes to places unknown." The purpose of this letter is to inform you of the results of the NRC staff's review.

Petition Review Process

On July 20, 2017, Mr. Richard Chang, the backup petition manager, contacted you acknowledging receipt of the Petition and indicated that you would have an opportunity to address the Petition Review Board (PRB) prior to the PRB making its initial recommendation to accept or reject the petition for review in accordance with Management Directive 8.11 (MD 8.11), "Review Process for 10 CFR 2.206 Petitions," (ML041770328). Initially, the staff evaluated the petition to determine whether it contains allegations or sensitive information. This initial NRC review occurred concurrently with an investigation of the activities of TtEC at HPNS by the U.S. Department of Justice (DOJ) and the NRC Office of Investigations (OI).

Following the PRB's initial review, on August 28, 2018, Mr. James Smith, the current petition manager, provided you an opportunity to address the PRB, and provide any relevant additional explanation to support for your request. That meeting was subsequently held on October 17, 2018. The transcript from this public meeting is considered a supplement to your petition and is available in ADAMS at ML18299A174. During the public meeting, you provided the PRB information you believe the PRB should consider as part of deliberations on this petition. Additionally, representatives of the licensee and members of the public provided the PRB their comments and perspectives on the merits of the petition.

On February 22, 2019, Mr. Smith informed you of the PRB's initial recommendation and offered you a second opportunity to address the PRB to provide additional, relevant information in support of your petition request. This second opportunity to address the PRB was held as a public meeting on June 25, 2019. The transcript from this public meeting is considered a supplement to your petition and is available in ADAMS at ML19196A076. During this meeting, you provided the PRB additional information you believe the PRB should consider as part of its deliberations, and also discussed the content of your fourth supplement to the petition. Representatives of the licensee and members of the public additionally provided the PRB their comments and perspectives on the merits of the petition.

On December 19, 2019, the NRC informed you that your petition was being held in abeyance pending the outcome of the DOJ's civil suit against TtEC. The NRC has provided quarterly updates reiterating the petition's status. However, the NRC has since determined that it may reassess your petition although the civil case is ongoing.

The PRB evaluated the information included in your petition, its supplements, and the clarifications provided at the October 17, 2018, and June 25, 2019, public meetings. The PRB has determined that your petition meets an MD 8.11¹ criterion for rejection; while much of the information contained in the petition and its supplements is new, such information is not considered significant in the context of the actions already taken by the NRC. The basis for the PRB's determination is explained below.

Previous NRC Evaluations at HPNS

The NRC has evaluated numerous allegations and conducted multiple inspections and investigations at HPNS related to topics referenced in your petition. Specifically:

- The NRC has evaluated numerous allegations at HPNS. The allegations cover concerns as early as 2007 on various topics, including employee protection rule violations,

¹ The petition was received on June 28, 2017. The applicable version of MD 8.11 at that time is available at ML041770328. Therefore, the PRB evaluated the petition against that version of MD 8.11.

deliberate misconduct, falsification of soil samples and associated records, sign and posting violations, instrument and monitor miscalibration, inadequate training and qualifications of employees, improper use of personal radiation exposure monitors, and improper soil remediation. Each of the allegations was evaluated by an Allegation Review Board (ARB) which dispositioned each of the individual concerns consistent with the NRC's Allegation Program by various means, including inspections conducted by the NRC staff (see, e.g., ML111230127; ML111230163; ML120370349; ML14128A006; ML14128A012; ML14247A297), and by an investigation conducted by the NRC OI (discussed in more detail below). Where appropriate, the ARB also referred allegations to other agencies such as the State of California, the U.S. Environmental Protection Agency (EPA), the U.S. Navy, and the U.S. Occupational Safety and Health Agency.

- On April 29, 2014, the NRC OI initiated an investigation of alleged wrongdoing associated with TtEC, specifically to determine whether employees of TtEC deliberately falsified soil sample records at HPNS in violation of NRC regulations. OI obtained documentary evidence including chain of custody records, TtEC Investigation Reports, site Standard Operating Procedures, and site logbooks entries. Additionally, OI interviewed a significant number of TtEC and contract personnel, as well as Navy personnel. As a result of the investigation, OI substantiated the allegation that one radiation control technician (RCT) and one radiation task supervisor (RTS) deliberately falsified soil sample records at HPNS during the 2011–2012 timeframe. Specifically, the RCT and RTS deliberately obtained soil samples from areas that were less contaminated but represented on related chain of custody records that the samples had been obtained from other locations that were actually more highly contaminated.
- As a result of the NRC OI investigation, the NRC issued TtEC a Severity Level III violation of 10 CFR 20.1501(a) for TtEC's failure to make or cause to be made, surveys of areas that were reasonable to evaluate concentrations and potential radiological hazards of residual radioactivity. See enforcement action (EA)-15-230; NRC-2016-0212, ML16285A288. As a result of the enforcement action, the NRC and TtEC engaged in Alternative Dispute Resolution, after which the NRC issued a comprehensive confirmatory order to TtEC. The confirmatory order documented TtEC's requirement to address root causes involved in the safety issues at HPNS, which included the following actions: staff re-training on NRC requirements; an independent, third-party assessment of all areas involving NRC-licensed activities to assess TtEC's safety culture; providing the Navy a copy of the Notice of Violation and confirmatory order; and use of a third-party to perform quality control on projects at HPNS for a period of 3 years after the effective date of the confirmatory order. Additionally, the NRC issued an escalated individual enforcement action to one employee of TtEC – Mr. Justin Hubbard – for violating 10 CFR 30.10(a), "Deliberate Misconduct" (ML16210A216).

Additionally, the NRC OI was a lead agency in the DOJ investigation of criminal wrongdoing at HPNS. On May 3, 2018, Stephen C. Rolfe and Justin E. Hubbard were sentenced to 8 months in prison for falsifying records in a federal investigation. Both defendants supervised a team of RCTs who conducted radiological remediation at HPNS. Both Hubbard and Rolfe pleaded guilty to falsifying documents. In addition to their prison terms, Hubbard and Rolfe were ordered to pay fines of \$10,000 and \$2,000, respectively. Both were placed on a 3-year period of supervised release following their prison sentences. See Press Release, US DOJ, Radiation Control Technician Supervisors Sentenced for Falsifying Former Hunter's Point Naval Shipyard Clean-Up Records (May 3, 2018), <https://www.justice.gov/usao-ndca/pr/radiation-control-technician-supervisors-sentenced-falsifying-former-hunter-s-point>.

The PRB's Evaluation of Greenaction for Health and Environmental Justice 2.206 Petition and Supplements

In accordance with MD 8.11, the PRB evaluated the petition and supplements to determine whether it meets the criteria for review or rejection.² According to the guidance in MD 8.11, the staff will not review a petition under 10 CFR 2.206 if it meets any of four listed criteria for rejecting petitions. The second of these criteria is as follows:

The petitioner raises issues that have already been the subject of NRC staff review and evaluation either on that facility, other similar facilities, or on a generic basis, for which a resolution has been achieved, the issues have been resolved, and the resolution is applicable to the facility in question. This would include requests to reconsider or reopen a previous enforcement action (including a decision not to initiate an enforcement action) or a director's decision. *These requests will not be treated as a 2.206 petition unless they present significant new information* (Emphasis added).

Consistent with the foregoing, the PRB evaluated the information contained in the petition and supplements to determine whether such information had already been the subject of NRC staff review and evaluation, and if not, whether the information was both new and significant. The PRB acknowledges that the petition and supplements do contain new information, in that the petition and its supplements assert the occurrence of additional instances of fraudulent behavior and activities of the sort previously evaluated and investigated by the NRC. However, when examined in the context of the evaluations, inspections, and investigations already performed by the NRC, along with the actions it has taken in response, these additional instances, even if proven to be true, would not be significant insofar as to compel the NRC to reevaluate or reconsider any of its prior actions as incomplete or inadequate.

Specifically, the petition and the supplements were initially evaluated through the NRC Region I ARB. The ARB initially determined that the information in the petition did not warrant further ARB-directed action (i.e., inspection and investigation) while the NRC was concurrently supporting the DOJ as a lead agency in the criminal investigation on the same or substantially similar allegations. Once the NRC's work in support of the DOJ criminal investigation was complete, Region I resumed consideration of the petition, and concluded that the information contained in the petition covered the same or substantially similar allegations that the NRC had previously evaluated. The Region I ARB members subsequently considered supplements to the petition, and likewise concluded that the conduct alleged in the supplements was the same or substantially similar to the NRC's previous allegations, investigations, and enforcement actions against TtEC.

Following the initial determination by the ARB, the PRB members considered the information in the petition and supplements against the previous NRC evaluations, including allegations, and the inspections, investigations, enforcement action, and confirmatory order that resulted from those allegations. The petition and supplements allege falsification that took place in various parcels at HPNS. Although, as noted, some claims in the petition and its supplements had not been specifically covered by previous agency evaluations, the PRB regards those claims as

² Additionally, the PRB evaluated the petition for assertions of NRC staff misconduct. Any such allegations were referred to the Office of the Inspector General.

more examples of the same behavior (e.g., sample and record falsification) that have already been the subject of NRC staff review and evaluation.³ Having made the determination that the petition and its supplements allege examples of the same types of behavior previously evaluated and investigated, the PRB considered whether the additional examples proffered in the petition and its supplements are significant: whether, if proven to be true, the additional examples would cause the NRC to reopen or reconsider any of its previous evaluations and actions as inadequate or incomplete.

The PRB also carefully considered the information related to the draft Building Radiation Survey Data Initial Evaluation Report (draft Navy Report) on the building radiation survey data, provided in Supplement 3 of the petition. Because the draft Navy Report is dated March 2018 (after the date of the Enforcement Order EA-15-230), it could be considered new. However, the PRB determined that the information was not significant to the 2.206 evaluation because the report provided statistical reasoning that more broadly questioned the validity of samples taken at HPNS by TtEC. The data in the report confirmed what previous NRC investigation and enforcement proceedings had already concluded: that fraudulent soil sampling had taken place at HPNS.

The PRB concluded that such additional examples would not compel the NRC to reevaluate any of its previous actions or reopen prior investigations, given the thoroughness and robustness of its past evaluations and actions taken in response. Therefore, the PRB determined that the information asserted in the petition and its supplements is not significant and, as such, that the petition should be rejected consistent with MD 8.11.

Furthermore, in evaluating whether additional enforcement action was necessary, the NRC staff considered the fact that TtEC is no longer performing remediation activities at HPNS and has not been awarded new work at HPNS since 2015. All areas previously remediated by TtEC have been or will be re-tested, and the Navy has hired a company to oversee the work of all contractors responsible for radiological remediation activities at the site. Based on this information, barring any significant information obtained by the NRC to the contrary in the future, no further enforcement action is warranted at this time.

Consistent with the Memorandum of Understanding between the NRC and DOJ to facilitate the exchange of information between agencies (<https://www.nrc.gov/about-nrc/regulatory/enforcement/moudoj.pdf>), the PRB is aware that the DOJ has filed a civil complaint against TtEC. Although Rolfe's plea agreement states that his motivation "came from pressure applied by the Tetra Tech supervisors," (Supplement 4, Exhibit 5 at 4) NRC OI was unable to substantiate further allegations against TtEC supervisors during the NRC OI investigation. However, if the NRC obtains significant new information from the DOJ civil suit proceedings, NRC staff will reassess previous TtEC enforcement actions. Consistent with Section 2.3.8, "Reopening Closed Enforcement Actions," of the NRC Enforcement Policy (ML18138A138), the NRC may consider, under special circumstances and on a case-by-case basis, reopening a closed enforcement action to increase or decrease the severity of a sanction or to correct the record.

³ Considered as part of the NRC staff review and evaluation are the evidence and results of the DOJ criminal investigation, given the involvement in that investigation by NRC OI. While the NRC OI investigation and resulting NRC enforcement action focused on Parcel C (part of the site under exclusive NRC jurisdiction) of HPNS, the NRC understands that the DOJ criminal investigation considered all HPNS parcels within Federal jurisdiction.

Conclusion

Based on the discussion above, the PRB has determined that your petition raises issues that have already been the subject of NRC staff review and evaluation, and that the information presented is not significant. The information presented in the petition does not undermine the soundness of the NRC evaluations of allegations, investigations, and enforcement actions against TtEC. Therefore, the petition meets the MD 8.11 criteria for rejecting petitions under 10 CFR 2.206, and the petition will not be accepted for further review.

Thank you for bringing these issues to the attention of the NRC and for your continued involvement in the important activities occurring at the HPNS. Consistent with Commission guidance in SECY 08-0077, the NRC will continue to remain engaged and rely on the Comprehensive Environmental Response, Compensation, and Liability Act process and EPA's regulatory oversight of the ongoing Navy remediation of all radioactive material at HPNS site.

Sincerely,



Signed by Marshall, Jane
on 06/26/23

Jane Marshall, Director
Division of Decommissioning, Uranium Recovery
and Waste Programs
Office of Nuclear Material Safety
and Safeguards

cc: Davina Pujari, Hanson Bridgett LLP
Preston Hopson, Tetra Tech EC, Inc.

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