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RE Tetra Tech**

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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10 CFR 2.206 PETITION REVIEW BOARD (PRB)

CONFERENCE CALL

RE

TETRA TECH EC

+ + + + +

TUESDAY

JUNE 25, 2019

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The conference call was convened at 4:00 p.m., Michael Case, Chairperson, Petition Review Board, presiding.

PETITIONERS: DAVID ANTON, STEVEN CASTLEMAN

PETITION REVIEW BOARD MEMBERS

JAMES SMITH, Petition Manager for 2.206

petition

LORRAINE BAER, Attorney, Office of

General Counsel

STEPHEN KOENICK, Member, Office of

Nuclear Materials Safety and

Safeguards

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CONTENTS

	<u>Page</u>
Introductory Remarks	
By James Smith.....	4
By Michael Case.....	10
Petitioner Remarks	
By Steven Castleman.....	13
By Tyler Sullivan.....	19
By David Anton.....	24
Petitioner Wrap-up	
By Steven Castleman.....	29
Questions and Remarks.....	30
Licensee Remarks	
By Davina Pujari.....	33
Public Comment Period.....	42
Closing Remarks.....	51
Adjourn.....	51

P-R-O-C-E-D-I-N-G-S

(4:01 p.m.)

MR. SMITH: I'd like to thank everybody for attending this meeting. My name is James Smith, I'm the NRC project manager in the division of decommissioning, uranium recovery, and waste programs.

We're here today to allow the Petitioners, David Anton and Steven Castleman, to address the Petition Review Board regarding the 2.206 petition and its supplements dated March 28, 2017.

I am, other than a project manager, also the Petition manager for this particular 2.206 petition.

The Petition Review Board typically consists of a chairman. Usually a manager of the senior executive service level at the NRC. But it also has me, Petition manager. And there is a PRB coordinator.

Other members of the Board are determined by the NRC Staff based on the content or the information in the petition requests.

As part of the Petition Review Board's review of the petition, David Anton and Steven Castleman have requested this opportunity to address

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the PRB.

Additionally, Tetra Tech is being represented by Melissa Malstrom, Davina Pujari and Preston Hopson. They have requested the opportunity to be present, and request clarification from the Petitioner and to ask and answer questions from the PRB.

The meeting was scheduled to begin at 4 o'clock. And after these introductory remarks, allow, we will allow Mr. Anton and Mr. Castleman 35 minutes to address the Board.

The meeting is being recorded by the NRC Operations Center, and it also being transcribed by a court reporter. The transcript will become a supplement to the petition.

The transcript will also be made publicly available. I know that we will be getting a CD copy. I know the previous one I had the ability to make copies, but I have lost my CD burner. But if someone would like an additional copy or a copy of the recording from the OP Center, I'll try my best to get you a copy.

Will the Staff present at headquarters please introduce yourself, other than me?

MR. CASE: Hi, I'm Mike Case. We'll be

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passing the mic, so there will be a little bit of delay.

I'm Mike Case, I'm the Petition Review Board Chairman.

MR. KOENICK: This is Stephen Koenick, I'm the Petition Review Board member.

MS. BAER: Lorraine Baer, Attorney, Office of the General Counsel.

MR. BUCKBERG: Perry Buckberg, the Agency 2.206 Petition Review Board Member.

MR. PICCIRELLO: Darren Piccirello, State Agreements Officer, NRC Region III.

MR. POY: Steven Poy, Office of Nuclear Material Safety and Safeguards, Agreement State Programs Branch.

MS. MODES: Kathy Modes, NMSS.

MR. SMITH: If there are any NRC Headquarters or Regional Staff on the line, please introduce yourselves. Okay.

MR. KLUKAN: Hi, Brett Klukan, regional counsel, U.S. Region I. Or U.S. NRC Region I.

MR. SMITH: Thank you, Brett. Anyone else?

MR. BICKETT: Hi, this is Brice Bickett, NRC Region I Branch Chief.

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MR. SMITH: Okay. Is there anyone else on the line? Okay.

Mr. Anton and Mr. Castleman, would you please introduce yourself for the record. And I realize Mr. Castleman may or may not be on the line yet.

MR. CASTLEMAN: No, I'm on the line.

MR. SMITH: Okay.

MR. CASTLEMAN: My name is Steven Castleman, I'm an Attorney representing Greenaction for Health and Environmental Justice. I'm with the Environmental Law Justice Clinic at Golden Gate University School of Law.

And I am joined by my colleague Tyler Sullivan, who is a lawyer and our graduate fellow. He also will be speaking during the telephone conference, if that's okay.

MR. SMITH: That would be fine.

MR. CASTLEMAN: Thank you.

MR. ANTON: This is David Anton, I'm an Attorney and I'm also working with and assisting Greenaction regarding this petition.

MR. SMITH: Ms. Malstrom, Ms. Pujari and Mr. Hopson, can you introduce yourself for the record also?

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MS. PUJARI: Yes. Good afternoon, this is Davina Pujari on behalf of Tetra Tech EC Incorporated.

MS. MALSTROM: Hello, everyone, this is Melissa Malstrom on behalf of Tetra Tech EC.

MR. HOPSON: And Preston Hopson on behalf of Tetra Tech EC.

MR. SMITH: Okay. Thank you. It's not required for members of the public to introduce themselves for this call, however, if there are any members of the public on the phone that wish to do so at this time, please state your name for the record.

MR. ANGEL: Hello, this is Bradley Angel and I'm the Executive Director of Greenaction for Health and Environmental Justice.

MR. SMITH: Thank you. Anyone else?

MR. FAGONE: I am Jason Fagone, I'm a reporter at the San Francisco Chronicle.

MR. SMITH: Okay.

MS. WAXMAN: Hello?

MR. SMITH: Yes.

MS. WAXMAN: Hi, Laura Waxman with the Examiner.

MR. SMITH: I'm sorry, could you say that again?

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MS. WAXMAN: Yes. Laura Waxman, I'm with the San Francisco Examiner. I'm a reporter.

MR. SMITH: Okay, thank you. Is there anyone else?

MR. BOWERS: My name is Bert Bowers, former employee at Hunters Point Shipyard, Radiation Safety officer.

MR. SMITH: Okay, it was very hard to hear you, I'm not sure if you're on a speaker phone or not. How about anyone else?

MR. JACKSON: Archie Jackson, former Hunters Point shipyard worker at Hunters Point Shipyard.

MR. SMITH: Could you say that one more time, we're having a hard time hearing you?

MR. JACKSON: Yes. Archie Jackson, former worker, Hunters Point shipyard.

MR. SMITH: All right, thank you, sir. And I heard there were two other people that I think we're trying to respond.

MS. ANDREWS: Susan Andrews, former employee of Hunters Point Shipyard.

MR. SMITH: Okay. Anyone else?

MR. JONES: James, this is David Jones, NRC Office of Enforcement.

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MR. SMITH: Oh, okay. Thank you, David.
There was one other person that was trying to --

MS. ENOMOTO: Sheridan Enomoto, with
Greenaction for Health and Environmental Justice.

MR. SMITH: I'm sorry, we're having a
very hard time hearing you, can you speak up?

MS. ENOMOTO: Sure. It's Sheridan
Enomoto, with Greenaction for Health and
Environmental Justice.

MR. SMITH: Okay, thank you. Anyone else?
Okay, get on with the rest of this.

I'd like to emphasize that we each need
to speak clearly and loudly to make sure that the
court reporter can accurately transcribe the meeting.
If you do have something that you would like to say,
please first state your name for the record.

For those dialing in to the meeting,
please remember to mute your phones to minimize
background noise or distractions. If you don't have
a mute button, this can be done by pressing the *6
key on your phone. To unmute press *6 again.

I think that's about all I have to say.
At this time, I'll turn it over to the PRB Chairman
Michael Case.

MR. CASE: Good afternoon, everyone.

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Welcome to the second meeting regarding the 2.206 petition submitted by Mr. Castleman and Mr. Anton. And I want to thank you all for participating.

I'd like to first share some background information on our process. Section 2.206 of Title 10 of Code of Federal Regulations describes the petition process. The primary mechanism for the public to request enforcement action by the NRC in a public process.

This process permits anyone to petition the NRC to take enforcement type actions related to an NRC licensee or license activities. The NRC Staff's guidance and for the disposition of 2.206 petition requests is in Management Directive 8.11. Which is publicly available.

The Petition Review Board has conducted its internal deliberations of the petition and its supplements. The PRB has preliminarily determined that the petition raises important issues that have already been subject to the NRC Staff review and evaluation. And the petition does not represent significant new information.

The PRB has initially concluded that the claims and allegations contained within the petition, and the supplements, have been addressed as part of

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one or more of the evaluations conducted by the NRC, including numerous allegation review boards and Office of Investigation, investigation into the site activity that resulted in a notice of violation and concluded in a confirmatory order and a Department of Justice criminal investigation.

The PRB has alerted the Petitioner that the PRB preliminary decided to reject the petition on a basis of a criteria and Management Directive 8.11. The PRB will make a final decision after considering the information presented today.

This meeting is not a hearing nor is it an opportunity for the Petitioner to question or examine the PRB on the merits or the issues presented in the petition request.

As described in our process, the NRC Staff may ask clarifying questions in order to better understand the Petitioner's presentation and to reach a reason decision whether to accept or reject the petition, Petitioner's request for review under the 2.206 process.

As a reminder for the phone participants, please identify yourself if you make any remarks as that will help us in the preparation of the meeting transcript that will be made publicly available.

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Mr. Castleman and Mr. Anton, I turn it over to you, and to Mr. Sullivan. And you're allowed an opportunity to provide any information you believe the PRB should consider as part of this petition.

You'll have about 35 minutes for your presentation. So, take it away gentlemen.

MR. SMITH: Mr. Anton, Mr. Castleman, Mr. Sullivan?

MR. ANTON: Mr. Castleman will be starting us off.

MR. CASTLEMAN: Sorry, I took the instruction to keep the mute button on a little too long.

(Laughter.)

MR. SMITH: Yes, I've done that too.

MR. CASTLEMAN: This is Steve Castleman. I will be opening our presentation, after which Tyler Sullivan will speak for a number of minutes, after which Mr. Anton will speak, and then I will wrap-up.

So, let me start off by thanking you for the opportunity to present to you again. But to renew our objection to the PRB proceeding until after we have had an opportunity for our FOIA request to be fulfilled.

Having said that, I want to stress that

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this is not an ordinary situation. This is not a situation that either 2.206 or 8.11 manual contemplated.

The word fraud does not appear in any of those documents. The word deliberate fraud does not appear. The word cover-up does not appear.

And that's what we're talking about here. Please don't try to fit fraud into the kind of pigeonhole that normal 2.206 hearings may relate to. They don't apply.

This is a unique situation that's required that you think outside of the norm. We request that you put substance over forms, that you put substance over bureaucratic inertia.

We teach our children not to lie, cheat, steal or cover-up. That is exactly what Tetra Tech has alluded to. And it isn't limited to one or two individuals.

If the NRC, and in particular, in this call to PRB, going to tell the world that it's okay to lie, cheat, steal and cover-up?

If you deny this petition or if you do not take action on your own, which you can do under 10.202, that is the exact method you will be sending to the people that you regulate. Apply commonsense

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here.

Now, the other thing that your denial will do is it will prevent future whistleblowers from coming in. The whistleblowers in this case have sacrificed a great personal expense.

It isn't easy to come in and rat out your company when they've committed deliberate fraud. If you ignore what the whistleblowers have brought forward, you might as well kiss goodbye the possibility that any further whistleblowers will come forward.

They will get the very definite message that coming forward ends their careers. And two of the informants in our latest supplemental, they say that exactly, they do not want their identities made public for fear of retaliation.

What we're asking is that you talk to them. Don't ignore the whistleblowers. By any definition, we have brought new and significant information that the NRC missed.

Enrique Manzanilla is the Superfund Director in Region 9, told many of us, myself and our students, that this was the worst case of fraud he has ever seen in the Superfund program.

There is a definite health and safety

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risk that you are ignoring. But for the information that we've brought forward, the Navy, EPA, NRC and all of the regulatory agencies would have approved property that was not properly decontaminated.

At a site where tens of thousands of people will be living for decades and decades and decades. Are you going to ignore that, no.

What you're doing to, are you going to rely on an investigation that ended in September of 2015 when the whistleblowers came forward in 2016?

Your investigation report, one whole page, does not even mention the anomalous samples report. It is limited to Parcel C and E, it does not relate to the other parcels that we have brought forth evidence of contamination.

Anomalous samples report also identified four additional individuals who participated in the fraud that you never spoke to. Jeff Rolfe, Anthony Smith, who had spoke to us and is a declarant here, they represent, and a gentleman named Cunningham.

You are relying on a one-page summary, actual summary, completed in 2015, as an umbrella that covers what we didn't learn until 2016, 2017, 2018 and 2019.

As opposed to your one-page summary, we

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have submitted 97 pages of sworn eye witness testimony. That is what your so-called investigation missed. Ninety-seven pages of sworn testimony.

It also happened to have missed the fact that according to the Navy themselves, the subject fraud is going to result in \$250 to \$300 million in damages. This is not small potatoes here, we're talking a quarter of a billion dollars as a result of fraud. That's missing in your so-called investigation.

Even if your investigation has mentioned anomalous samples report, that involves 36 discrete samples. However, every single piece of analytical data efforts has reported, has had to have been thrown out as a result of the data reviewed.

In November of 2018, at a public meeting, United States Navy published this decision. They reviewed 900,000 analytical results in their data review of Tetra Tech's data. 900,000. The anomalous samples report talks about 36.

Your report, generally, could include 36 samples. That means it's missed 899,964 analytical results.

They've found one, I'm sorry, we have found four one-thousandths, four one-thousandths of

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the data problems that the Navy and the EPA found. That's what your so-called investigation missed.

Your investigation missed a building scan fraud that we brought forward. Your investigation missed the scanning fraud of soil. Your investigation missed contamination in Parcel D-1, in the sewer systems and a discreet sample on the surface.

How much more evidence do you need? More evidence will come out if you only look.

Ask yourselves this question, how many more Anthony Smith's are out there?

Now look, the 2.206 process is intended to bring to your attention things you don't already know about. Yes, it's to hold Tetra Tech responsible for their fraud, but it's also to hold the NRC responsible for its decision making in this case as well.

The 2.206 process offers the PRB Members, and the NRC in general, an opportunity to reopen a past enforcement action which was a sham of an investigation. It missed most of the fraud.

The 2.206 process, in this case, not only puts Tetra Tech at issue, it puts the NRC on file before the court of public opinion.

And this is the question you have to ask.

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Will the PRB make a recommendation to correct the mistake that it made in its 2015 investigation, and reliant upon that until now or will it compound that mistake?

Thank you. I will turn this over to Tyler Sullivan now.

MR. SULLIVAN: Thank you, Steven. Hello, I'm Tyler Sullivan for Greenaction. And thank you to the Board for accommodating the various interests in making this call come together.

I have two topics to cover. First, the standard for accepting the 2.206 petition, the second, the evidence Greenaction submitted recently in Supplement Number 4.

First, the standard for accepting petitions. According to Management Directive 8.11, the PRB must accept the 2.206 petition and recommend the NRC institute further proceedings "if the facts that constitute the basis for taking the particular action are specified, provide some elements of support beyond their assertion and the facts are credible and sufficient to warrant further inquiry."

Now, where a proceeding has already evaluated the issue in the petition, a petition will nonetheless accept it if it brings new and significant

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information. Said differently, the PRB can reject the petition if it lacks credibility, lacks specificity or lacks new and significant information.

The concept of new relates to whether the NRC has previously "evaluated the information in response to the issue raised in the petition." So, to the extent that the NRC has evaluated specific evidence in the past, the NRC must document in its final decision how the previous evaluations cover the same evidence.

As to significance, who is significant, 8.11 essentially restates the standard for when the petition should be accepted. Stating, "significant information means that the information is sufficiently great or important to be worthy of attention. And the information is real and not speculative."

It's a low standard. And ultimately, it must be a low standard for accepting a petition at this stage of the 2.206 process.

The PRB is here to filter those petitions which are unsupported by any evidence and filter out repetitive evidence to ensure that the finality of past NRC decisions is maintained.

The PRB must apply a generous standards

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of petitions at this preliminary stage. Because the task of assigning the level of severity or significance is reserved for much later on, at the conclusion of an NRC investigation.

The standard in NRC guidance recognizes that the PRB is not in a position to accurately accept the significance at this stage. So, at this preliminary stage, the PRB is instructed to accept petitions unless they're truly lacking in merit.

Although the 2.206 process is not itself an enforcement action, the NRC's enforcement guidelines provides directions that the PRB should consider here.

At this preliminary stage, it should be sufficient for Greenaction's petition to provide evidence of any violation, regardless of severity.

Greenaction has conclusively demonstrated that Tetra Tech submitted new, previously unrecognized violations. Furthermore, many of these new violations are most severe demonstrating that the petition clearly meets the requirement for presenting new and significant information.

Moving to the details of Supplement Number 4, my second topic. Supplement 4 brings the

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NRC evidence of new geographic areas, Parcel D-1 and Parcel A at the shipyard, that have been impacted by Tetra Tech's fraud.

Tetra Tech suppressed survey data of a hotspot registering an estimated 750,000 counts per minute on a scanning device. Evidence in Supplement 4 also showed the dirt strained by Tetra Tech was released as cleaned and used as backfill at Parcel 1.

Parcel D, excuse me, D-1. Parcel D-1. Parcel D-1 is not labeled as impacted.

Supplement 4 also provides more detail of the events that led to the discovery of contamination at Parcel A. Survey results that were suppressed at a parcel which has similar not been labeled as impacted.

Supplement 4 also provide new specific evidence of how Tetra Tech management was complicit in the fraud. And even has directed various instances of fraud.

Specific fraudulent behavior by Tetra Tech project manager, manager Bill Dougherty, construction superintendent, Dennis McWade, and another manager, Jeff Bray, are included in Supplement 4. These individuals participated in suppressing evidence of contamination at Parcel D-1.

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Supplement 4 is detailed for the NRC how the scope of Tetra Tech's fraud at Hunters Point continually expanded. There is no end in sight.

Who else in Tetra Tech's management was involved? This is what the NRC must investigate to determine whether Tetra Tech can be trusted, to ensure health, the health and the safety of the public.

Looking to enforcement precedence at policies for guidance as the level of significance of what I described above, the PRB will see that this type of willful misrepresentation to the NRC is categorized as extremely severe. "It cannot be tolerated," because it undermines the trust that is required between the NRC and its licensees.

These types of willful misrepresentations simply are not tolerated by the NRC. Ultimately, these types of willful violations undermine the NRCs ability to perform its regulatory functions. And the PRB must recognize that the information here is worthy of attention and is therefore significant.

Lastly, the remedy Greenaction seeks is revocation. Because the scale and impacts of the fraud has no parallel in NRC precedence or guidance, these types of violations undermine NRCs ability to rely on representations made by Tetra Tech. Where

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trust is irreparably damaged, the NRC must revoke the license.

However, if the NRC determines, after a thorough investigation, that a lesser consequence is more appropriate, we ask that the NRC justify that conclusion and take the opportunity to describe why a lesser consequence is in the interest of protecting the public health and safety. Thank you.

MR. CASTLEMAN: And now we will turn it over to David Anton.

MR. ANTON: Good afternoon. I'm going to address a few aspects about new and significant information that was beyond what the Nuclear Regulatory Commission evaluated when it made its 2015 enforcement action.

In its petition, it submitted evidence that as far back as 2005, that Parcel E, management of Tetra Tech directed that scanning devices on conveyor belts for soil be changed so that radioactive soil went out into the public rather than being trapped and remediated.

The NRC did not know this information at all when it made its investigation back in 2015. That information first came through this petition. It showed that management directed fraud as early as

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2005.

In the petition, we also submitted information that in 2009 Chuck Taylor, the radiological safety officer representative for Tetra Tech at Hunters Point, directed that scan samples fencing, that was being considered to be released into the public.

The scans that came out hot, Chuck Taylor, a management representative of Tetra Tech, ordered that scans and lab samples that showed up with elevated dangerous levels of radioactivity be destroyed and that the fence be released into the public.

That information was never evaluated by the Nuclear Regulatory Commission, when it made its first investigation and enforcement action. Again, top management directing fraud first being presented to this petition.

In 2009, the petition presented information that Bill Dougherty directed Rad Techs to destroy samples taken under Building 351A. And that a scan be done so that samples be taken from known low level areas so that Building 351 could be falsely designated as safe.

Top management, we presented that through

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this petition. It is not known by the Nuclear Regulatory Commission, it was not evaluated by them when they took their enforcement action in 2015.

We've also presented evidence in this new petition that Parcel D-1, that Rad Tech came across 750,000 count radium sources on the surface of Parcel D-1. That area had been incorrectly designated by Tetra Tech's earlier scans as being free of any radioactivity on the surface above health and safety levels.

Rather than report that information and have it properly processed by the Navy designating areas as radiologically controlled areas and remediating the zone properly, Tetra Tech took efforts to quash that information. Top management was involved in that. Bill Dougherty, Dennis McWade.

That information was not evaluated by the Nuclear Regulatory Commission when it took its regulatory action in 2015.

In building information there was, this petition and the subsequent information presented through the Navy's data reads, which is all subsequent and part of this petition, which was not known or considered by the Nuclear Regulatory Commission in 2015 because it didn't exist, showed that scans of

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buildings were block copied.

That type of function only happens in the office, that's not a field function. Top management had to be involved for that type of block copying to be done on numerous buildings.

The scan fraud found on buildings in the Navy's building report, shows about two dozen being fraudulently scanned spanning years. That information was not evaluated or known by the Nuclear Regulatory Commission.

At the beginning of this meeting, the Chair mentioned, as one of the pieces for the Nuclear Regulatory Commission having considered, improperly referenced the United States criminal actions.

Those actions did not exist at the time the petition was filed. Those criminal charges did not exist and were not evaluated by the Nuclear Regulatory Commission when it made its limited enforcement action.

The charges that were brought, I don't know how much credit, but I know that the individuals who support this petition, their information went a long way towards getting the United States to start that investigation.

For the Nuclear Regulatory Commission's

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fate, it considered the criminal charges as part. That's false. That didn't exist at the time the Nuclear Regulatory Commission took its enforcement action.

Finally, if no action is taken by the Nuclear Regulatory Commission, you have presented the industry with a playbook on how to cheat. Just like Tetra Tech did, it revealed a small tip of the iceberg of its cheating and let the Nuclear Regulatory Commission be misguided.

Let them do a little bit and come up with a real action. A slap on the wrist. Or instead, massive fraud had been going on for years directed by top management.

If you now take the position that, oh, we knew something, we knew a little bit and we took a little action, you give a playbook for anyone in the industry to lead the NRC by the nose, show them a little bit and then they're home free in engaging in massive fraud, just like Tetra Tech did.

Finally, we have talked with dozens and dozens of Rad Techs who worked at Hunters Point and in the industry. They are watching what you do here. They saw that the Nuclear Regulatory Commission took no efforts, no concrete actions to protect the

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whistleblowers who got fired from Hunters Point.

Nuclear Regulatory Commission struck out on that. And the industry knows that. Very few, Rad Techs now say to each other, don't go, you're going to get nowhere with Nuclear Regulatory Commission, there will be no protection.

But then there's, and that's for the personal level. But here today, now you're dealing with the industry level.

If you do nothing, substantive to address this massive fraud, Rad Techs will know that there's no sense in to reporting to the NRC because the only thing that can happen, nothing against the company, but they end up losing their career. They'll be blackballed just like the whistleblowers have been who brought this forward.

You now are in the position to do something or to show your pathetic agency that will not protect individuals in their employment and won't protect the public. Because all this radioactivity that's being addressed here for fraud, Tetra Tech is willing to exchange health and safety of the public for profit.

MR. SMITH: Mr. Anton, I'd just like to let you know, you've got about another five minutes

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left.

MR. ANTON: I'm now turning it over to Mr. Castleman.

MR. CASTLEMAN: Thank you. David said what I wanted to say, so in the interest of time I'm going to cut myself short, and that will conclude our presentation.

MR. SMITH: At this time, I'm going to allow some questions and remarks.

Does the Staff here at headquarters have any questions for Mr. Anton and Mr. Castleman?

MR. CASE: Hi, folks. Nice presentation. Thanks for that, that was good information.

MR. SMITH: Identify yourself.

MR. CASE: Oh, Mike Case, PRB Chair. You referred to a fourth supplement, are saying, is there a fourth submission or is it something that we already have?

MR. CASTLEMAN: Yes, the fourth submission, we submitted it Friday. And it includes a fourth supplemental and several exhibits.

MR. CASE: Okay, thanks for that.

MS. PUJARI: This is Davina Pujari on behalf of TtEC. I would like to note for the record that we were not copied on that transmittal and we do

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not have a copy of the transmittal, of Supplement Number 4. We cannot find it on the website for the NRC or the PRB, so we have not had the benefit of that.

And I believe throughout this proceeding, courtesy copies have generally been provided by a submitting party to another party, and that did not occur in this case.

MR. CASE: Okay, we don't have it here at the NRC neither so I'm sure its somewhere in transit, so we'll track it down and of course we'll make copies available to you and the public.

I do have --

(Simultaneous speaking.)

MR. CASTLEMAN: I have email confirmations of the filings.

MR. CASE: Okay, not a problem. We'll track it down.

MR. CASTLEMAN: You should have it somewhere. And furthermore, we have not provided courtesy copies to the Tetra Tech attorneys. At the time of the petition, for example, we didn't know who they were.

MR. CASE: Right. Yes.

MR. ANTON: Davina --

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MR. CASE: We'll take care of it.

MR. ANTON: -- we will see that we copy you with the filing.

MS. PUJARI: Thank you very much, David.

MR. ANTON: This is David Anton. Sure.

COURT REPORTER: Could they keep identifying themselves?

MR. CASE: Just a reminder from our reporter that please identify yourself when you speak so that he can keep up with you. He's doing a great job.

I did have one further question. It's just a clarification. Mr. Sullivan, when you were discussing, you talked about, I think you called him Jeff Bray. I'm not familiar, can you refresh my memory as to what his role is at the site?

MR. CASTLEMAN: I'll take that. This is Steve Castleman. In the fourth supplemental there is a witness who discusses finding a high, an area of high radiation, 750,000 counts.

Which resulted in his going to a meeting that included Mr. Dougherty, Mr. McWade and Mr. Bray, who is a deputy to Dougherty apparently. In which they told him that the Navy was not going to want to hear about this and they were not going to tell him.

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MR. CASE: Okay, thanks. That's kind of who I thought he was.

MR. ANTON: I can provide you a little bit more information. The United States, in their complaints against Tetra Tech, I believe, lists Mr. Bray and his role and his position at Tetra Tech. And lists him as one of the individuals responsible for the fraud.

MR. SMITH: Thank you. This is Jim Smith again. By the way, any other questions from the Members here at headquarters? No.

How about any of the NRC Staff on the phone?

At this point I'm not hearing any so I'd like to give the licensee an opportunity to ask any questions or make any statements they'd like, but to limit it to about ten minutes, at most.

After that, we will be asking members of the public if they would like to participate, make comments.

Before I say that, members of the public may provide comments regarding petition and ask questions about the 2.206 process, however I stated in opening the purpose of this meeting is not to provide an opportunity for the Petitioner or the

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public to question or examine the PRB regarding the merits of the petition.

So, I'll let the representatives from Tetra Tech take about ten minutes.

MS. PUJARI: Thank you very much. This is Davina Pujari on behalf of Tetra Tech EC. And I will refer to the company as TtEC for brevity.

The Review Board finding that the Petitioners have failed to present any significant new information and has failed to submit critical and sufficient evidence to warrant further inquiry is absolutely correct.

The Petitioner has not, and in fact cannot, demonstrate any basis for the NRC to open a new investigation here. The isolated sampling issues discovered at Hunters Point were thoroughly investigated by the NRC and by the Navy and by TtEC.

The sampling issues were resolved pursuant to those investigations. TtEC re-sampled all questioned areas and performed additional remediation where necessary. And that ensured that no radiation health risks remained at Hunters Point.

Now, as the NRC previously recognized, TtEC has an excellent record related to its radiological materials license. Outside of these

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isolated sampling issues that were identified and corrected at Hunters Point.

Moreover, TtEC voluntarily disclosed these issues to the NRC and provided a comprehensive investigation report, which discussed all of the issues in an open and straightforward manner. TtEC's actions were consistent with the obligations of an NRC license holder.

There's simply no facts in the petition or any of the supplements that warrant a new investigation here. TtEC has not worked at or near Hunters Point for over two years.

Declarants and counsel for the Petitioners are engaged in litigation against TtEC relating to the same alleged conduct that was in the petition. That litigation will address Petitioner's allegations. As TtEC is confident that it will be vindicated.

Now, in specific response to the Petitioner's counsel remarks, as the Review Board understands, the regulations at Section 2.206 govern this proceeding and govern the PRB's analysis and evaluation for petition.

I, unlike Mr. Castleman, have urged the PRB to follow its own regulation, to not go outside

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this regulation. That would be outside of the PRB's mandate and charge in effective proceedings.

In response to the allegation that there would be some sort of message sent by the PRB if it were not to reopen this investigation, an investigation that has already been thoroughly completed, there was a message sent by the NRC in the prior investigation.

That investigation resulted in an enforcement action. The exact type of action that is being called for, again, by the Petitioners.

There is no need to subject the Licensee for repetitive and undue enforcement for the same allegations and the same conduct. If that were to happen, then you have a due process implications based on a sequential and repetitive and duplicative process that is not contemplated by the regulations here.

As to the allegation that whistleblowers will be discouraged from coming forward, these so-called whistleblowers have current claims pending in federal court against TtEC.

These so-called whistleblowers have shown no reluctance whatsoever. Continue to harass and make baseless and unfounded allegations against TtEC.

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There have been numerous government agencies, as Mr. Case mentioned at the outset of this hearing, not just the NRC, also the DOJ, also the Navy, that have fully and thoroughly investigated these allegations that Petitioner continues to raise over and over and over in a harassing manner.

And those investigations are, have been thorough and there should not be another one reopened here.

The Petitioner also made remarks that not everything that the Petitioner has alleged was included in the confirmatory order. Well, the Petitioner there is confusing what was evaluated by the NRC, which is the exact words that are included in the confirmatory order.

Given the repetitive, duplicative, multiple pages of declarations and allegations that have been made here, it's not reasonable to assume or conclude that the confirmatory order would include every single one of them. The confirmatory order states what the scope of the investigation was and what the conclusions were.

And frankly, the confirmatory order states that the NRC was unable to validate as many of the allegations. So there's no requirement that every

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single sentence in a petition is responded to in a confirmatory order for the evaluation standards within that.

Petitioner's counsel also conflates the 2014 investigation report with a confirmatory order. That 2014 investigation report was separately submitted to the Navy and to the NRC. The NRC had the full benefit of the findings of that 2014 investigation report when it went through its investigative process and when it executed a confirmatory order.

To go back and re-plow over that ground that has been thoroughly investigated by numerous agencies would be an absolute waste and would be an affirmation of the harassment that Petitioners are demanding against TtEC.

That report was thorough, it was evaluated. And as Mr. Case mentioned at the outset of the hearing, it essentially provided a framework for DOJ to criminally prosecute two low level TtEC employees.

And those employees were covered by the confirmatory order. There's no way to get around that when you look at the timing of this.

The NRC had the benefit of that report.

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It was issued in 2014. The confirmatory order then came out in 2016.

In fact, Mr. Smith was front and center in that 2014 investigation report and is mentioned in the confirmatory order.

There is no need for the NRC to go back and look at that again when it's already looked at it so incredibly thoroughly.

I'd like to say a word about the last data evaluation report that had been mentioned repeatedly by Petitioners. So, first, those draft reports are, as the name implies, draft reports. They were not released by the Navy, they were --

MR. SMITH: Ms. Pujari, this is James Smith. I just want to let you know, we've got about seven more minutes for the meeting to be on the phone call, so probably in about two minutes could you wrap-up?

MS. PUJARI: Absolutely, yes. That's plenty of time.

The status of the draft reports are highly uncertain. They've been marked draft, they were leaked, they were not released.

And essentially what they contain is a draft preliminary statistical analysis, which the

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Petitioners incorrectly and improbably relied on for the claimed widespread fraud.

Those draft reports are very flawed in terms of their unscientific methods. But even so, those draft reports do not claim widespread fraud.

At the most, those Navy reviewers were identifying based on absolutely unfounded criteria and unscientific methodology, data that warranted another look in their view.

That is not fraud. The word fraud encompasses a monetary aspect. And what those reviews do is not, they do not state that fraud occurred in a widespread manner at the site, they just don't. As much as the Petitioner keeps saying that, that is not what they say.

Now, the NRC performed multiple investigations to address the allegations made regarding TtEC's work at Hunters Point. As reflected in the PRB's initial recommendation to deny this petition.

We're going over and over and over the same information. And again, at some point that does implicate due process.

I do want to say a quick word and then I'll wrap-up, about Supplement 4. Simply based on

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what I heard today on the telephone.

And that is that, TtEC worked on Parcel D-2. And Shaw and CB&I worked on Parcel D-1.

Now, I'm only going to say that as a preliminary matter at this point because I have not seen, as I mentioned, Supplement 4. But I did want to just raise that to frame the Review Board's review of that supplement plan when everybody has a chance to actually see it.

In closing, the Board has made a correct decision in choosing to reject this petition and we thank the Board for time and consideration in reviewing this matter. And thank you very much for taking the time to have this telephone conference today.

MR. SMITH: Okay. Would anyone else from Tetra Tech, from TtEC, like to make a statement?

MS. PUJARI: No thank you.

MR. SMITH: Okay. At this time, we will allow members of the public, we've only got about three minutes left, if anyone from the public has a question or two that they'd like to ask.

But I'd like to let you know that this is a Category 1 meeting, so you have your right to ask questions, but the Petitioner, the Licensee don't

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have to respond. We, the NRC, will try to respond.

So, well, with about two and a half minutes left, are there any questions from the audience?

MR. CASTLEMAN: Mr. Case, this is Steve Castleman, please. Considering that we do have several members of the public who would like to address you, isn't it reasonable that you extend the time of the meeting for a reasonable period of time to hear them? Especially since Tetra Tech is not on your agenda.

MR. CASE: Sure, why don't we go for ten minutes or so.

MR. CASTLEMAN: How about half an hour?

MR. CASE: Let's go for ten, see how we do. Okay, there are 12 minutes now.

Who would like, does anyone have any questions or would like to make a statement? Please address us and tell us your name for the court reporter.

MR. BOWERS: My name is Bert Bowers. I have a question to begin with.

MR. CASE: Okay.

MR. BOWERS: NRC Form 3, everyone on the Board is familiar with that, no doubt. Is there, my

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question is, is there a statute of limitations where someone who worked on the licensee site is limited by time by which they can no longer express a concern i.e. if they worked at a site, let's say in 2009, but over time they've watched the news, they've listened to current events, they've talked to former co-workers, information becomes available and things become realized to the individual, is there anything in NRC Form 3 that prevents a person from raising a statement concern that deals with the former working staff, the surrounding general public and the surrounding environment associated with the licensing site, is there a time limit where you can no longer come forward to NRC Form 3, for the record?

MR. SMITH: I'm going to let my lawyer answer this one. But my preliminary view is, no, I don't believe there is, but I'll be corrected shortly.

MS. BAER: This is Lorraine Baer. I'm not familiar with NRC Form 3.

MR. SMITH: That's the notice to licensees --

MR. KLUKAN: This is Brett Klukan. Can you hear me okay? I just want to make sure that you can hear me?

MR. SMITH: Yes, we can hear you well.

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MR. KLUKAN: I'm with the Regional Counsel for Region I, and also the allegations and enforcement team right now. Which means that my team is the one in charge of receiving allegations.

I can say that, like Lorraine I am unfamiliar with Form 3, but I think it's immaterial to the question you've raised in that, if the question is, and I'm going to re-frame it, is there a time limit on, by which a member of the public has to bring a safety issue to the NRC in order for it to be considered, the answer is strictly no. There is no time limit.

MR. BOWERS: Thank you.

MR. KLUKAN: However, I mean of course, as time goes on the issue becomes stale, the issue may no longer, in terms of a plant may not be in operation, and we can go down a series of hypotheticals.

But is there some kind of statute of limitation by which a member of the public has time to bring a safety concern to the allegation process, no.

Of course there are other statute of limitations, for example, in order to pursue a claim with the Department of Labor for whistleblower

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retaliation, yes.

But in terms of bringing an underlying safety issue concerning the operations of a licensee, no. I hope that answered your question.

MR. SMITH: Okay, Mr. Bowers, are --

MR. BOWERS: Bert Bowers. Thank you. In regards to that answer, at the time when I was at Hunters Point, I was the Rad safety officer representative initialed into the site for New World Environment.

Further into my tenure at that site, Tetra Tech decided to, first time use every of this newly acquired NRC license. And the idea was that I rollover and assume the same role that I had with New World, instead with the Tetra Tech license. That was okay with Rasso's endorsement, Navy Rasso's endorsement, and I did that.

During that time frame, I was also a training instructor. I administered orientation training to anyone requiring access to that site, build the rad safety implications.

And I pointed out NRC Form 3. And what's the responsibilities for it.

And actually for each person, there it's posted in conspicuous areas throughout a licensing

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site, to what is my responsibility. For your own protection it states, through the protection of your co-workers, you should know how NRC requirements relate to your work and should follow them.

And if you observe violations of the requirements or have a safety concern, you should report them. Over time, and you're very familiar with the initial phases of the investigations at Hunters Point, I followed due diligence on the NRC Form 3.

I also did what I was claimed I had to do, try to resolve safety issues first through the employer. Through channels available through the employer. Those issues were exhausted.

And then the tripping point for me, when I was obligated to definitely notify the NRC, that occurred on the day when I realized someone had come into my office, drilled out the locks in my file cabinet, where I had licensed driven blocking files of legal documents.

At that time, there was a combination of documents. Some identified the New World, and they used two phases of the project, but also some that applied to Tetra Tech for the new license.

MR. SMITH: Mr. Bowers, I have to

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interrupt you for a second.

MR. BOWERS: Yes.

MR. SMITH: We have an allegations process, and that sounds to me that you're making an allegation. And if you'd like to file that process --

MR. BOWERS: This is something that had already been reported. And once it was reported I was told they would get that to me. The word is, I'm still waiting for them to get back to me.

I also painstakingly, after many documents were shredded in my office, I reconstructed those through an electronic backup files that I had in lieu of the hard copies.

It amounted to, in the neighborhood of 30 3-ring binders about three inches thick.

MR. SMITH: Mr. Bowers, I'm going to have to ask you to --

MR. BOWERS: -- at the time with the NRC.

MR. SMITH: Yes. And the actuality, while I was talking, can you conclude?

MR. BOWERS: -- documents -- may I finish?

MR. SMITH: Well, I'm not sure where this is going or how long it will take.

MR. BOWERS: Yes, let me share it with
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you.

MR. SMITH: Okay.

MR. BOWERS: I sent a 3-ring binder to a special agent assigned to the investigation and asked him, would he bring it with him when he met me face-to-face. When he showed up, he did not bring the document, the binders with him.

I asked him, I said, am I correct in the assumption you have a Rad safety background, he said he did not, it was in criminal investigations.

So, the point is, there's a lot of information you can't cover in one face-to-face meeting. You can't cover in one hour hearing like this, where there's been years and years of information to review and to assess.

But also, to make the determination on. And since that was first provided, just short of a decade that's past, this is your legacy, Mr. Smith. It's under your watch. And everybody on that Board.

So, I challenge you to really, I beg you to consider your obligation to the safety and well-being of the workers that were at that site, the general public that lives in that surrounding community and the environment. And how possibly the repercussions could spread over to other locations

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besides Hunters Point, including Treasure Island, Alameda, San Quentin, Washington State and possible beyond. Thank you.

MR. SMITH: All right, thank you. Is there anyone besides Mr. Bower that would like to make a comment? I'll give you a chance, *6 to put your phone back on.

MS. ANDREWS: This is Susan Andrews. I was wondering why you feel that the portal monitor, which was the last rad waste survey observed before it actually went out, off of Hunters Point Shipyard into the general public, why you never looked into them changing in the way they checked the trucks before they went off site?

I'm just one of many people that worked on this portal monitor and you really don't talk to them.

MR. SMITH: Um --

MS. ANDREWS: Especially now. That they know --

MR. SMITH: Ms. Andrews, I've been alerted, or asked to remind you, we're just here to ask clarifying questions not to ask specifics. I assure you this is a one hour meeting --

MS. ANDREWS: Yes, but --

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MR. SMITH: -- but we have spent many, many hours looking at the information.

MS. ANDREWA: -- and that's okay because this radiation went out to the general public. That's what the NRC cares about, I thought, so, apparently you don't. Thank you very much.

MR. SMITH: All right. We have about five minutes remaining, would anyone else like to make a presentation or talk, comment, ask a question?

MR. CASTLEMAN: This is Steve Castleman. If I can beg your indulgence? I misspoke and one of my colleagues pointed it out.

I said during my remarks that this situation was not contemplated by 2.206 and I did not intend to say that. I intended to say that it is a situation that can be subject to 2.206.

I just wanted to correct the record in that regard, and I apologize for my error.

MR. SMITH: Okay, thank you. Anyone else? Okay, before we close, does the court reporter need any additional information for the meeting transcript?

COURT REPORTER: I do have some spelling questions.

MR. SMITH: Okay. Would you like to --

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COURT REPORTER: They're rather extensive. I don't know if you want them on the record or --

MR. SMITH: No. But if you have questions, I pretty much know who we, whose been on the line, I can help you with that.

COURT REPORTER: Yes, there was just a, Mr. Sullivan mentioned there's some --

MR. SMITH: Oh, I'm sorry, you're not speaking into the --

COURT REPORTER: Oh, I'm sorry.

MS. BAER: Close the meeting and --

MR. SMITH: Yes, we'll help you out.

MS. BAER: -- go off the record and then he can ask the questions.

MR. SMITH: Okay. We may be contacting you for spellings and some names when we get the official transcript back.

If there's nothing else further, I'll allow Mr. Case to say some closing remarks.

MR. CASE: Okay, I want to specifically thank Mr. Anton and Mr. Castleman, and Mr. Sullivan, who contributed. I think you all did an awesome job. You helped us, you gave us some more information that we needed to consider, and we will do that.

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And I also want to thank the Tetra Tech team. Ms. Malstrom, Ms. Pujari and Mr. Hopson, for providing their insights as well.

And I think we already checked with the court reporter, so I think we will conclude the meeting. And thanks for everybody for taking the time to do this.

(Whereupon, the above-entitled matter went off the record at 5:10 p.m.)

NEAL R. GROSS

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