

UNITED STATES DISTRICT COURT

for the

Northern District of California

Five Point Holdings, LLC, et al.

Plaintiff

v.
Tetra Tech, Inc. et al.

Defendant

Civil Action No. 3:20-cv-01481-JD

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Marian Zobler, General Counsel, United States Nuclear Regulatory Commission

(Name of person to whom this subpoena is directed)

Production: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Attachment A.

Place: Alston & Bird LLP c/o Jeffrey Dintzer 560 Mission Street, Suite 2100 San Francisco, CA 94105	Date and Time: 09/16/2021 9:00 am PST
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Inspection of Premises: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 08/12/2021

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Five Point Holdings, LLC, who issues or requests this subpoena, are: Jeffrey D. Dintzer, Alston & Bird LLP, 333 South Hope St., 16th Fl., Los Angeles, CA 90071, 213-576-1063

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

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PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____
_____ *Server's signature*

_____ *Printed name and title*

_____ *Server's address*

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT A

This subpoena calls for the recipient to produce the documents described under the heading “Documents and Things to be Produced” below in accordance with the accompanying “Definitions.”

DEFINITIONS

The following definitions shall apply herein:

1. “Aleut World Solutions” means Aleut World Solutions, LLC and its subsidiaries, predecessor entities, affiliates, employees, or agents.
2. “Communications” means any oral or written exchange of words, thoughts, or ideas to another Person or Persons, whether Person to Person, or in a group, by telephone, by letter, by fax, by electronic mail, by text message, by signing, or by any other process, verbal, written, electronic, or otherwise, and all Documents involving, comprising, summarizing, or containing such communications.
3. “Concerning” means describing, discussing, showing, consisting of, pertaining to, relating to, alluding to, explaining, analyzing, comprising, summarizing, commenting on, responding to, disclosing, characterizing, evidencing, constituting, or to be in any way logically connected with the matter discussed, either directly or indirectly, in whole or in part.
4. “CP Development Co.” means CP Development Co., LLC and its agents and employees.
5. “Documents” shall be interpreted in accordance with the definition in the Federal Rules of Civil Procedure, and includes, but is not limited to, items within Your actual or constructive possession, custody, or control, whether such items are typed, printed, recorded, stored in a computer, stored on a hard drive, CD, or flash drive, reproduced by any mechanical process, copied or written by hand, including, but not limited to, Communications, memoranda, e-mails, summaries and/or records of telephone conversations, summaries and/or records of personal conversations, minutes and/or records of meetings and conferences, photographs, drawings, and databases.

6. “Five Point” means Five Point Holdings, LLC and its agents and employees.
7. “Greenaction Petition” means the Petition to Revoke Materials License No. 29-31396-01 filed by Greenaction for Health and Environmental Justice against Tetra Tech EC, Inc., including all exhibits, attachments, and declarations in support thereof.
8. “HPNS” means all property that has been, at any time, part of Hunters Point Naval Shipyard, also known as “Naval Station Treasure Island, Hunters Point Annex,” “Hunters Point Annex,” “HPA,” “former HPNS,” and/or “former Hunters Point Naval Shipyard.”
9. “IO Environmental” means IO Environmental & Infrastructure Inc., and its subsidiaries, predecessor entities, affiliates, employees, or agents.
10. “Lennar” includes CPHP Development, LLC, HPS Development Co., LP, HPS1 Block 50, LLC, HPS1 Block 51, LLC, HPS1 Block 53, LLC, HPS1 Block 54, LLC, HPS1 BLOCK 55, LLC, HPS1 BLOCK 56/57, LLC, and Lennar Corporation, including their agents and employees.
11. “Navy” means the United States Department of the Navy, and its agents, departments, component agencies, and employees.
12. “New World” means New World Environmental, Inc., including New World Environmental, Inc., doing business as New World Technology, and its subsidiaries, predecessor entities, affiliates, employees, and agents.
13. “Person” as used herein means all individuals (natural persons), entities, firms, organizations, groups, committees, regulatory agencies, governmental entities, business entities, corporations, partnerships, trusts, and estates.
14. “Radioactive Materials” means any material which emits radiation spontaneously and includes any and all substances and materials defined or referred to as “radiation,” a “radioactive material” or “radioactive waste,” or any other term of similar import under any hazardous materials laws, including (but not limited to) Title 26, California Code of Regulations Section 17-30100, and any statutes, regulations or other laws administered, enforced or

promulgated by the Nuclear Regulatory Commission.

15. “RSRS” means Radiological Survey & Remediation Services, LLC, also referred to as “RSRS,” and its subsidiaries, predecessor entities, affiliates, employees, or agents.

16. “Statements” means any sentence, declaration, testimony, point, or report by any individual that posits something as true.

17. “Tetra Tech” means Tetra Tech, Inc. and Tetra Tech EC, Inc. and their subsidiaries, predecessor entities (including but not limited to Tetra Tech EM, Inc., PRC Environmental Management, Foster Wheeler Environmental Corporation, and Tetra Tech FW, Inc.), affiliates, employees, or agents.

18. “Work” refers to performing, participating in, implementing, directing, organizing, managing, and/or supervising any tasks, assignments, activities, or projects related to the assessment, investigation or remediation of Radioactive Materials at HPNS, including but not limited to preliminary, interim or final assessments, record reviews, field inspections, site inspections, laboratory inspections, remedial investigations, feasibility studies, creation of proposed plans and/or records of decision, risk management reviews, investigations, historical assessments, audits, creation and submittal of invoices, revised studies, sampling, tests, analysis, evaluation, planning, remediation, removals, and/or preparation of draft and final reports and plans of any kind.

19. “You,” “Your,” and “NRC” mean the United States Nuclear Regulatory Commission, and its agents, departments, component agencies, and employees.

DOCUMENTS AND THINGS TO BE PRODUCED

1. The entire case file and all Documents Concerning Nuclear Regulatory Commission Office of Investigations Case No. 1-2014-018.

2. All Statements given by Laura Lowman, to any Person, Concerning Work performed at HPNS.

3. All Documents exchanged between Laura Lowman and the NRC Concerning the

performance of Work at HPNS.

4. All Documents Concerning Laura Lowman's performance of Work at HPNS.
5. All Documents exchanged between Laura Lowman and the NRC Concerning Tetra Tech.
6. All Documents exchanged between Laura Lowman and the NRC Concerning Thorpe Miller.
7. All Documents sent or received by the NRC Concerning Thorpe Miller's criminal history, including but not limited to any criminal charges related to Thorpe Miller's employment with Target Corporation.
8. All Documents Concerning any investigation performed by the NRC Concerning Laura Lowman's performance of Work at HPNS.
9. All Documents Concerning Tetra Tech's decision to hire Thorpe Miller to perform Work at HPNS.
10. All Documents Concerning IO Environmental hiring Thorpe Miller to perform Work at HPNS.
11. All Documents exchanged between the NRC and Tetra Tech Concerning Thorpe Miller.
12. All Documents Concerning New World hiring Susan Andrews to perform Work at HPNS.
13. All Documents Concerning Aleut World Solutions hiring Susan Andrews to perform Work at HPNS.
14. All Communications Concerning the mother-son relationship between Laura Lowman and Thorpe Miller, including but not limited to whether the relationship between Laura Lowman and Thorpe Miller created a conflict of interest.
15. All Documents Concerning Thorpe Miller's performance of Work at HPNS as a Radiological Data Analyst, including but not limited to Thorpe Miller's performance of Work

Concerning radiological screening yard activities.

16. All Documents Concerning any investigation performed by the NRC Concerning Thorpe Miller's performance of Work at HPNS as a Radiological Data Analyst.

17. All Documents Concerning Thorpe Miller's resignation from Tetra Tech on or about April 23, 2010.

18. All Documents Concerning Laura Lowman's retirement or resignation from the Navy.

19. All Documents exchanged between the NRC and Elbert Bowers Concerning the performance of Work at HPNS.

20. All Documents Concerning Elbert Bowers' performance of Work at HPNS.

21. All Documents Concerning New World hiring Elbert Bowers to perform Work at HPNS.

22. All Documents Concerning Tetra Tech hiring Elbert Bowers to perform Work at HPNS.

23. All Documents referencing, referring to, or discussing in any manner the Declaration of Elbert Bowers in Support of Petition to Revoke the License of Tetra Tech EC, Inc.¹

24. All Documents Concerning any investigation performed by the NRC Concerning Elbert Bowers' performance of Work at HPNS.

25. All Documents Concerning any investigation performed by the NRC Concerning Elbert Bowers' allegations regarding Work at HPNS.

26. All Documents Concerning Susan Andrews' performance of Work at HPNS.

27. All Documents Concerning New World hiring Susan Andrews to perform Work at HPNS.

28. All Documents Concerning Aleut World Solutions hiring Susan Andrews to

¹ Available at: <https://www.nrc.gov/docs/ML1817/ML18178A097.pdf>.

perform Work at HPNS.

29. All Documents exchanged between the NRC and Susan Andrews Concerning the performance of Work at HPNS, including but not limited to Susan Andrews' report to the NRC on or about November 2011 Concerning Tetra Tech's performance of Work at HPNS.

30. All Documents referencing, referring to, or discussing in any manner the Declaration of Susan V. Andrews in Support of Petition to Revoke the License of Tetra Tech EC, Inc.²

31. All Documents Concerning any complaint of discrimination that Susan Andrews made to the NRC.

32. All Documents Concerning any investigation performed by the NRC Concerning Susan Andrews' allegations regarding Work performed at HPNS.

33. All Documents referenced in Richard J. Urban's letter to Susan Andrews dated January 5, 2012, the subject of which was "Concerns You Raised to the NRC Regarding Hunters Point Naval Shipyard." This includes, but is not limited to, a string of emails from Catherine Daly, Deputy Labor Commissioner, State of California, on November 21, 2011; a voice message that Susan Andrews left Richard J. Urban on December 10, 2011; an email that Susan Andrews sent to Special Agent Young on December 10, 2011; an acknowledgement letter from the NRC to Susan Andrews dated November 17, 2011; notes regarding Susan Andrews' telephone discussion on December 11, 2011 with Rick Munoz from the NRC Region IV Office in Texas; and NRC's November 17, 2011 letter to Susan Andrews.

34. All Documents that Richard J. Urban referenced, reviewed, or relied upon for the purpose of preparing and submitting a letter to Susan Andrews dated January 5, 2012, the subject of which was "Concerns You Raised to the NRC Regarding Hunters Point Naval Shipyard."

35. All Documents Concerning any investigation conducted by the NRC into the

² Available at: <https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1005&context=hpns>.

“concerns” raised in Richard J. Urban’s letter to Susan Andrews dated January 5, 2012, the subject of which was “Concerns You Raised to the NRC Regarding Hunters Point Naval Shipyard.”

36. All Documents Concerning any interview that Susan Andrews participated in with the NRC, including but not limited to an interview with the Donrich Young, a Special Agent with the NRC Region I Field Office, on or about October 26, 2011.

37. All Documents Concerning Rick Zahensky’s performance of Work at HPNS.

38. All Documents Concerning New World hiring Rick Zahensky to perform Work at HPNS.

39. All Documents Concerning RSRS hiring Rick Zahensky to perform Work at HPNS.

40. All Documents exchanged between the NRC and Rick Zahensky Concerning the performance of Work at HPNS.

41. All Documents Concerning any investigation performed by the NRC Concerning any allegations regarding Rick Zahensky’s performance of Work at HPNS.

42. All Documents Concerning Joseph (“Joe”) Cunningham’s performance of Work at HPNS.

43. All Documents exchanged between the NRC and Joseph (“Joe”) Cunningham Concerning the performance of Work at HPNS.

44. All Documents Concerning any investigation performed by the NRC Concerning any allegations regarding Joseph (“Joe”) Cunningham’s performance of Work at HPNS.