



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION**  
REGION I  
475 ALLENDALE RD, SUITE 102  
KING OF PRUSSIA, PA 19406-1415

October 13, 2022

EA-22-029

Kevin Kosko, President/Owner  
K2 Environmental LLC.  
120 N. Market St.  
Lisbon, OH 44432

**SUBJECT: NOTICE OF VIOLATION – K2 ENVIRONMENTAL LLC., NRC INSPECTION  
REPORT NO. 99990007/2022001**

Dear Mr. Kosko:

This letter refers to the remote inspection of K2 Environmental LLC (K2) conducted by the U.S. Nuclear Regulatory Commission (NRC) from March 11, 2022, through April 4, 2022, with in-office review through May 11, 2022. The purpose of the inspection was to examine the activities conducted within the jurisdiction of the NRC as they related to NRC-licensed byproduct material. Within this area, the inspection consisted of a selected examination of procedures and representative records and interviews with you. Based on the results of the inspection, the NRC identified one apparent violation (AV) of NRC requirements. The NRC discussed the AV with you during a telephonic exit meeting on May 11, 2022. The AV was described in the NRC inspection report sent to you with a letter dated June 10, 2022 (ML22161A021).<sup>1</sup>

The AV involved K2's failure to file for reciprocity or receive a specific license from the NRC prior to performing work in NRC jurisdiction. Specifically, on July 20 and 25, 2018, August 18, 2018, February 10 and 28, 2021, and March 2, 2021, K2 performed waste characterization, waste processing, and waste brokerage services on behalf of a client involving NRC-licensed byproduct material in West Virginia, a non-Agreement State, without either receiving a general license for reciprocity with its State of Ohio radioactive materials license or receiving an equivalent specific license with the NRC.

In the June 10, 2022, letter transmitting the inspection report, we informed you that the AV was being considered for escalated enforcement action. In the letter, we requested that you respond in writing describing how K2 will determine what jurisdiction it is working in and whether it needs to file for reciprocity with the NRC prior to performing work. We also offered you the opportunity to provide this information and address the AV by attending a pre-decisional enforcement conference (PEC) in lieu of providing the written response.

In a letter dated July 6, 2022, (ML22094A119), you provided a response to the AV and described the actions taken and planned by K2 to address the issues that resulted in the AV.

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<sup>1</sup> Designation in parentheses refers to an Agency-wide Documents Access and Management System (ADAMS) accession number. Documents referenced in this letter are publicly-available using the accession number in ADAMS.

These actions included committing to applying for reciprocity with the appropriate State or the NRC prior to engaging in licensed activities involving byproduct material and maintaining a questioning attitude and seeking guidance when there is uncertainty about jurisdictional status. Based on the information developed during the inspection and the information provided in K2's July 6, 2022, response, the NRC determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation and the circumstances surrounding it are described in detail in the subject inspection report.

As described above, the violation is related to the failure to file for reciprocity or receive a specific license from the NRC prior to performing work in NRC jurisdiction. The NRC considers the failure to file for reciprocity a significant regulatory concern because the NRC was not informed of the activities occurring in NRC jurisdiction and therefore, was not provided an opportunity to conduct inspections of licensed activities. Therefore, this violation is categorized in accordance with the NRC Enforcement Policy as a Severity Level III (SL III) violation. The NRC Enforcement Policy can be found on the NRC's website at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$16,000 is considered for a SL III violation. Because K2 has not been the subject of escalated enforcement actions within the last 2 years, the NRC considered whether credit was warranted for Corrective Action in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy. The NRC has concluded that credit is warranted for K2's corrective actions taken to address the violation. Specifically, K2 committed to a process to identify the state or states where reciprocity agreements are required and to receive the appropriate authorization with the associated state or NRC. Additionally, K2 committed to maintaining a questioning attitude and to seeking written regulatory guidance to confirm jurisdictional status. Therefore, to encourage prompt and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, after consultation with the Director, Office of Enforcement, I have been authorized not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. In addition, issuance of this Severity Level III violation constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC has concluded that information regarding: (1) the reason for the violation; (2) the corrective actions that have been taken and the results achieved; and (3) the date when full compliance was achieved is already adequately addressed on the docket in Inspection Report No. 99990007/2022001. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice and Procedure," a copy of this letter, its enclosure, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room and from the NRC's Agency-wide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC also includes significant enforcement actions on its Web site at <https://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>.

K. Kosko

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If you have any questions concerning this matter, please contact Christopher Cahill of my staff at 610-337-5108 or [Christopher.Cahill@nrc.gov](mailto:Christopher.Cahill@nrc.gov).

Sincerely,

David C. Lew  
Regional Administrator

Enclosure:  
Notice of Violation

Docket No. 99990007  
License No. OH-03219150001

cc w/Encl:  
Gene Phillips, State of Ohio  
Stephen James, State of Ohio  
Tera Patton, State of West Virginia

SUBJECT: NOTICE OF VIOLATION – K2 ENVIRONMENTAL LLC., NRC INSPECTION  
 REPORT NO. 99990007/2022001: DATED

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## ENCLOSURE

### NOTICE OF VIOLATION

K2 Environmental LLC.  
Lisbon, Ohio

Docket No.: 99990007  
License No.: OH-03219150001  
EA-22-029

During an NRC inspection conducted between March 11, 2022, through April 4, 2022, with in-office review through May 11, 2022, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 30.3 requires, in part, that no person shall manufacture, produce, transfer, receive, acquire, own, possess, or use byproduct material except as authorized in a specific license issued in accordance with the regulations in Chapter I.

10 CFR 150.20(b) requires, in part, that any person engaging in activities in non-Agreement States or in areas of exclusive Federal jurisdiction within Agreement States, under the general licenses provided in this section shall, at least 3 days before engaging in each activity for the first time in a calendar year, file a submittal containing an NRC Form 241 "Report of Proposed Activities in Non-Agreement States," a copy of its Agreement State specific license, and the appropriate fee with the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office.

Contrary to the above, from at least June 2018, through March 2021, K2 Environmental LLC used byproduct material in NRC jurisdiction without a specific or general license issued by the NRC and engaged in licensed activities in a non-Agreement State without meeting the requirements in 10 CFR 150.20(b). Specifically, K2 Environmental LLC performed waste characterization, waste processing, and waste brokerage activities within NRC jurisdiction for 10 CFR Part 39 tracer study well returns without holding a specific NRC license authorizing such activities or submitting an NRC Form 241, a copy of its Agreement State license, and the appropriate fee to the Regional Office.

This is a Severity Level III Violation (NRC Enforcement Policy Section 6.9).

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 99990007/2022001 and in a letter from K2 Environmental, LLC. dated July 6, 2022 (ML22094A119). However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation, (EA-22-029)," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator, Region I within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or in the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. Therefore, to the extent possible, the response

Enclosure

should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

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

Dated this 13<sup>th</sup> day of October 2022.