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February 20, 2023

MEMORANDUM FOR NRC

SUBJECT: Empire Wireline, LLC Inspection Report 150-00042/2023-006 (ML23305A199)

Dear Members of the Predecisional Enforcement Conference (PEC)

This letter is in response to the United States Nuclear Regulatory Commission (NRC) Inspection report dated December 1, 2023 (Attachment 1). In response to that letter, Empire Wireline requested, and was granted, attendance at today's PEC. This written response, counsel's personal attendance at the PEC, and Empire's corrective actions demonstrate Empire's unqualified resolve and commitment to ensure full compliance at all times with local, state, and Federal statutes as well as Empire's absolute undertaking in ensuring the highest level of safety for its employees and our citizens.

Background: During the early part of 2019, Empire Wireline was called by Fluor Petroleum ("Fluor"), a federal prime contractor responsible for several SPR sites, to fill a void created by Fluor's subcontractor's, Schlumberger's, inability to perform wireline services. A contract was entered into between Fluor, the prime government contractor, and Empire Wireline, the subcontractor, to perform these wireline services at a variety of locations including Bryan Mound Texas, Big Hill Texas, and West Hackberry Louisiana. A total of five jobs are being cited as being performed. The only services provided in fulfilling this Department of Energy contract which involved any type of source regulated by the NRC were Oil-Brine interface tests. Services ranged from June 4, 2019 to February 26, 2020. No incidents, lost sources, or contamination occurred during the performance of services.

On or about August, 2023, Mr. Leo Wardrobe, NRC, made direct contact with Matt Chitwood, Empire Wireline Health Safety and Environmental officer. Unfortunately, due to the uniqueness of wireline operations involving sources, Mr. Chitwood is not a qualified Radiation Safety Officer (RSO). While Empire maintains that Mr. Chitwood had only the best of intentions, he is not properly qualified to speak on behalf of Empire relating to these matters. Following multiple telephone calls over the course of approximately four months, based on the information provided, the NRC made a determination that Empire Wireline may have violated 10 CFR 150.20(b)(1) in failing to file for reciprocity in an area of exclusive federal jurisdiction.

Empire Wireline is fully committed to correcting any misunderstanding and wholly desires to keep our record spotless especially based on the following mitigating facts and valid exceptions:

A. DOE Contractors [and their subcontractors] operating within State boundaries are exempted from the licensing requirements. *10 CFR 40.11*

1. It is undisputed that FFPO is a federal contractor performing services for the DOE and operating within state boundaries.

a. "Fluor Federal Petroleum Operations (FFPO) is a special-purpose company formed for the sole purpose of managing and operating the Strategic Petroleum Reserve (SPR) under a prime contract with the U.S. Department of Energy (DOE)." FFPO Website, <https://www.fluorfpo.com>, December 28, 2023.



2. FFPO assumed responsibility for the sources while “being transported...or while in the custody or under the control of any member of Company Group.” FFPO DOE Contract, pg. 15, para. 36

3. 10 CFR 40.11, states “any prime contractor or subcontractor of the Department or the Commission is exempt from the requirements for a license set forth in sections 62, 63, and 64 of the Act and from the regulations in this part to the extent that such prime contractor or subcontractor receives, possesses, uses, transfers or delivers source material under his prime contract or subcontract when the Commission determines that the exemption of the prime contractor or subcontractor is authorized by law; and that, under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety.”

([40 FR 8787](#), Mar. 3, 1975, as amended at [43 FR 6923](#), Feb. 17, 1978; [45 FR 65531](#), Oct. 3, 1980)

B. None of the SPR sites were listed as exclusive federal jurisdiction

1. By NRC’s own written and verbal admissions, the NRC failed to classify the sites as being within the confines of exclusive federal jurisdiction.

a. NRC/NMSS Approval Procedures states that in situations where surface and subsurface mineral rights are owned by different parties in Agreement States, jurisdiction will be based on the surface ownership.

b. Empire Wireline possessed both a valid Texas and Louisiana permit and none of the lands were listed as exclusive federal jurisdiction.

C. Nulla poena sine lege

1. Translated to modern day English means “no punishment without a law”.

2. The Supreme Court of the United States has repeatedly held the basic legal tenant of nulla poena in refusing to prosecute when no law on the books for their alleged crime existed as well as refused to enforcement punishments when no law on the books exists.

a. The SPRs were not listed as exclusive federal jurisdiction; therefore, no federal law or procedure could have been violated.

b. Empire possessed the proper State licenses for their activities and fully complied with state laws during their operations.

D. Empire ensured Safety at all times

1. Consideration by NRC is whether work was done without undue risk to public health and public safety

2. Empire complied with all Agreement State policies and procedures

3. No compromise

a. No Incidents

b. No Accidents

c. No Lost Source

d. Served Greater Public Good

Empire Wireline takes this matter extremely serious and has taken multiple, proactive changes to ensure that such misunderstanding or alleged noncompliance does not occur in the future. First, Empire has changed our internal processes. Any and all contracts must be reviewed by Counsel. Second, a database is being created to properly log any areas of uncertainty. Third, and most importantly, Appendix B of the Office of Nuclear Material Safety and Safeguards (NMSS), Interim Procedure Approval, Jurisdiction Determinations - SA-500, is being strictly adhered in any case of potential uncertainty. Specifically, a written determination will be sought in any area which poses potential uncertainty. Fourth, all inquiries are now being routed to key staff to ensure only the proper qualified personnel are speaking on behalf of



Empire. Finally, additional training is being undertaken by key stakeholders at Empire including counsel. These five steps are truly indicative of Empire's commitment to perfection.

The NRC has complete discretion in determining the outcome of this matter. By your own NRC Enforcement Policy, you should consider the following:

1. Whether any alleged noncompliance was known at the time—it was not;
2. Whether any alleged noncompliance was repetitive—it was not;
3. Whether any alleged noncompliance was intentional—it was not;
4. Empire's previous incidents or citations—Empire does not;
5. Empire's actions to prevent future noncompliance—Empire has taken actions; and
6. "Empire's sincere efforts to resolve this matter"—Empire's commitment is unquestioned.

Empire is respectfully requesting that based on the facts of the matter, the uncertainty regarding the status of the property at the time services were rendered, the corrective actions undertaken by Empire, and the Enforcement factors to be considered by the NRC, that no violation is determined. Alternatively, if the NRC does determine that a violation in fact occurred, that the outcome be classified as "Non-Cited Violation". A copy of slides being presented today in support of this position may be found in Attachment Two (2) to this memorandum.

Very Respectfully

A handwritten signature in blue ink, appearing to read "Aldru Todd Aaron", written in a cursive style.

Aldru Todd Aaron
Attorney at Law

ATA/lj

Attachments (2)

1. NRC Letter, Dec 1, 2023
2. Copies of Empire Feb 20, 2023 PEC Presentation