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March 22, 2016

## Via Overnight Mail

James M. Trapp, Director  
Division of Nuclear Material Safety  
U.S. Nuclear Regulatory Commission, Region 1  
2100 Renaissance Blvd., Suite 100  
King of Prussia, PA 19406-2713

### **RE: Supplemental Letter Concerning NRC Office of Investigations Report #1-2014-018**

Dear Mr. Trapp:

I am writing to supplement my earlier letter dated May 16, 2016 on behalf of our client, Tetra Tech EC, Inc. ("Tetra Tech"). In addition to the information set forth in that letter, Tetra Tech wants to address the fact that the apparent violation discussed in the February 11, 2016 letter from your office (the "February 11 letter") is premised on a conclusion that Tetra Tech acted willfully. This supplemental letter is intended to address that issue.

Enclosure 1 to the February 11 letter states that based on information they provided to NRC investigators it appears that a Radiation Control Technician ("RCT") and a Radiation Task Supervisor ("RTS") employed by Tetra Tech "deliberately falsified soil sample surveys of the HPNS Parcel C." The same enclosure also states that the RCT told NRC investigators that he was tasked by Tetra Tech to "obtain soil samples from specified areas within Parcel C that Tetra Tech engineers had physically marked and also identified on a map." Likewise, the RTS apparently told NRC investigators that on 10 to 15 occasions, he "deviated from where the [Tetra Tech] engineers instructed the technicians to dig without following protocol."

Thus, according to Enclosure 1, Tetra Tech engineers properly marked areas to be sampled and established protocols for the sampling procedures, and the RCT and the RTS deviated from Tetra Tech's established procedures and protocols. Nothing in Enclosure 1 establishes that Tetra Tech's protocols were insufficient or that Tetra Tech management was aware of or encouraged the actions of the RCT and the RTS. Instead, apparently for their own purposes, the RCT and RTS deliberately chose to engage in conduct in direct violation of the instructions they received from Tetra Tech.

As discussed in my earlier letter, once Tetra Tech was informed that an issue existed with respect to the soil samples, Tetra Tech took all appropriate steps – it undertook an investigation of soil sample results from various locations at HPNS; it reviewed its database of 70,000 samples and identified any survey units that appeared to have abnormal results; it submitted an investigation report to both the Navy and to the NRC concerning its investigation; and it identified and implemented multiple corrective actions. Those corrective actions included removing all individuals who were listed as having conducted the sampling for the questioned anomalous samples; disciplining the two Tetra Tech health physics supervisors responsible for the soil sample collection work; and issuing letters of caution to all other relevant project management personnel.

Simply put, based on the evidence developed during the NRC investigation, it appears that while Tetra Tech acted appropriately by designating sampling areas and establishing sampling protocols, the RCT and the RTS chose to violate Tetra Tech's procedures, and that once Tetra Tech learned of the issue, it quickly and appropriately took steps to ensure that no further violations occurred.

In addition to their violations of Tetra Tech's sampling protocols, the RCT and RTS also violated other Tetra Tech stated policies by not immediately reporting the improper sample collection. As professionals in this industry, the RCT and RTS had a duty to report the improper sampling. Tetra Tech has a Code of Conduct that requires workers to report improper acts or behavior. As reflected in my earlier letter, Tetra Tech had many methods available for site workers to report concerns, and they could do so anonymously. The many reporting methods included the following:

- The NRC's Hotline Phone Number was posted in multiple locations throughout the site.
- Tetra Tech's Hotline Phone Number was posted in multiple locations throughout the site.
- Wallet cards with points of contact for reporting concerns were provided to site workers.
- ZIP Slips were available to write down concerns and a drop box for completed ZIP Slips was located on site.
- Every employee had the ability to report concerns to the Radiation Safety Officer or Radiation Safety Officer Representative.

This is not a case where the licensee, Tetra Tech, acted willfully in evading radiation protocols. Tetra Tech had protocols in place which the RCT and the RTS apparently chose to ignore. In this type of case, it does not appear appropriate to find that Tetra Tech, as compared with the two individuals, engaged in a "willful" violation. This is especially true in light of the fact that the events that gave rise to the proposed violation run counter to Tetra Tech's own procedures and protocols and, as discussed in my earlier letter, run counter to the strong safety culture that Tetra Tech maintained at HPNS.

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We also believe that the proposed violation in this case is contrary to actions the NRC has taken in other cases where employees have independently chosen to violate procedures mandated by their employers. For example, in the matters of Larry Yeates (IA-15-026) and Mickey Lovell (IA-15-028), the NRC concluded that two individuals had committed Severity Level III violations by ignoring procedures at the Monticello Nuclear Generating Plant. Following mediation, and the agreement of the licensee to take certain actions, including corrective actions, the NRC refrained from issuing a notice of violation to the licensee and also did not impose a fine. Northern States Power Company (Monticello Nuclear Generating Plant) (EA-14-193).

For the reasons set forth in my earlier letter and above, we are asking you to carefully review this matter and the violation that is being considered for Tetra Tech. This is not a case where the actions of the RCT and RTS were encouraged or countenanced by Tetra Tech and, in light of Tetra Tech's actions here, including the many remedial actions it has already taken, we question whether any violation, much less a Severity Level III violation, is appropriate.

Thank you for your consideration.

Very truly yours,

  
James L. Sanders

JLS:cd