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VIA E-MAIL AND OVERNIGHT DELIVERY (James.Smith@nrc.gov; Lorraine.Baer@nrc.gov)

Petition Review Board
c/o James Smith and Lorraine Baer
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

**Re: Factual Clarifications Concerning Statements Made by Petitioner at 10 C.F.R.
§ 2.206 Public Meeting, October 17, 2018**

Dear Petition Review Board:

Tetra Tech EC, Inc. (TtEC)¹ provides the following letter to clarify and correct certain allegations that were made by Greenaction for Environmental Justice (Petitioner) during the public meeting held October 17, 2018. The inaccurate statements made by Petitioner further demonstrate that Petitioner has not met its burden of demonstrating that its allegations are "credible and sufficient to warrant further inquiry," as required under 10 C.F.R. § 2.206 and Management Directive 8.11. The Petition Review Board should not accept this factually deficient Petition for review, for the reasons set forth below and in TtEC's Response to the Petition.

1. There Is No Evidence of Criminal Activity by TtEC or Its Management.

Petitioner falsely claims that evidence "establishes criminal activity by Tetra Tech."² However, there has never been any demonstrated wrongdoing by anyone at TtEC other than two low-level employees, Justin Hubbard and Steven Rolfe.

Hubbard and Rolfe were hired by TtEC as "Radiation Task Supervisors" to oversee New World Environmental employees conducting the radiological field work onsite, as the Navy required.³ Radiation Task Supervisors were the lowest-level radiation employees that TtEC maintained onsite at HPNS at that time. These individuals reported to mid-level TtEC onsite management. Petitioner's repeated references to wrongdoing committed by TtEC "supervisors" and "management"⁴ is intentionally misleading.

¹ Note that while the Petitioner repeatedly referred to "Tetra Tech" throughout the meeting presentation, the holder of the NRC license at issue is Tetra Tech EC, Inc. (TtEC), a distinct corporate entity. For the purpose of responding to Petitioner's allegations, TtEC assumes that all accusations directed at "Tetra Tech" refer to TtEC, unless otherwise noted.

² 10 C.F.R. 2.206 Petition Review Board (PRB) Information Meeting RE Tetra Tech EC, Inc. Transcript, Docket No. 030-38199 (Oct. 17, 2018) (hereinafter, "Oct. 17 Transcript") at p. 15:25.

³ See TtEC Response to 2.206 Petition at p. 4, ln. 10-12 and fn. 9

⁴ See Oct. 17 Transcript, at p. 17:1-15, 23:10, 24:17, 26:25, 29:12, 30:18-22, 36:6-10,

2. There Is No Evidence That TtEC Management Directed or Encouraged the Falsification of Site Data.

Petitioner's claim that Rolfe and Hubbard "admitted they engaged in radiological fraud due to the direction" of TtEC management is inaccurate. While Rolfe's plea agreement claims he felt "pressure from TtEC management" there is nothing contained in that plea, or identified elsewhere, demonstrating that TtEC upper management was aware of any of Hubbard's and Rolfe's misconduct, much less took part in it.

Petitioner nevertheless made repeated, vague allegations that TtEC management was somehow involved in wrongdoing. For instance, Petitioner stated that "fake soil samples [were taken] at the direction of management and supervisors,"⁵ "Tetra Tech's management gave directions to discard samples of radioactive material,"⁶ "Tetra Tech's management directed scanning in a false way to hide the high radioactive readings,"⁷ and "Tetra Tech ordered false building surveys."⁸ These allegations are unsupported and false.

In fact, there is no evidence of wrongdoing by any TtEC manager. The only allegation by Petitioner that TtEC management was even aware of the data falsification comes from Anthony Smith.⁹ As Petitioner and the NRC are aware, Smith is not credible, and his statements have not been substantiated. Moreover, as Petitioner is aware, NRC's own investigation concluded that TtEC management was not involved with any data falsification.¹⁰ And most telling, when faced with criminal prosecution and time in prison, the most damning statement that either Hubbard or Rolfe could make, under penalty of perjury, was that one of them felt vaguely defined "pressure" from TtEC management. There is no explanation of the nature of this pressure or how it was applied.

The evidence before the Petition Review Board demonstrates that TtEC management had no knowledge of any of the alleged misconduct.

3. TtEC has Cooperated with All Investigations, Including the NRC Investigations.

Petitioner also falsely alleges that TtEC "mislead NRC investigators," "covered up the falsification of radiological data and radioactive cleanup,"¹¹ and "fooled"¹² and defrauded¹³ the NRC. TtEC has cooperated in all investigations concerning each of the declarants' allegations. TtEC conducted its own investigations into these allegations, as both Petitioner and the NRC are aware, and produced those findings for review by the Navy and the NRC. TtEC continues to cooperate with all ongoing investigations. Petitioner's submissions do not demonstrate any sort

⁵ Oct. 17 Transcript, at p. 16:25-17:2.

⁶ Oct. 17 Transcript, at p. 17:6-7

⁷ Oct. 17 Transcript, at p. 17:11-13.

⁸ Oct. 17 Transcript, at p. 17:16-17.

⁹ See Smith Decl. at ¶ 10.

¹⁰ See Petition, Exhibit J, Encl. 1 at p. 2, NRC Response to Point #3.

¹¹ Oct. 17 Transcript, at p. 18:4-8.

¹² Oct. 17 Transcript, at p. 30:7-10.

¹³ Oct. 17 Transcript, at p. 30:18-22.

of "cover up" as alleged. Rather, the actual evidence demonstrates that TtEC responded to all allegations of improper behavior by conducting internal investigations and working with the Navy and regulators to address all misconduct. TtEC also cooperated with the NRC and made employees available for its prior, completed investigations. There is simply no basis for Petitioner's far-fetched accusations of a widespread cover-up or attempts to mislead the NRC or anyone else about what occurred at HPNS.

4. Building 351A Was Adequately Remediated in Accordance with Proper Protocols.

Petitioner has presented no evidence, beyond Anthony Smith's implausible and unsupported allegations, that any fraud occurred in connection with the remediation of Building 351A. The documentary evidence demonstrates that the area was adequately remediated. Petitioner's claims that fraud was "corporate-directed"¹⁴ have no support, as even Anthony Smith's unsubstantiated allegations are limited to purported instructions by a single TtEC onsite manager, Bill Dougherty, to destroy one soil sample.¹⁵

Petitioner repeatedly stated that Smith alleged that Dougherty did not want to use the vacuum truck remediation for a third time,¹⁶ but that statement appears nowhere in Anthony Smith's declaration regarding Building 351A.¹⁷ Petitioner's counsel simply fabricated this allegation and attempted to pass it off as "evidence." Moreover, Smith claims fraudulent sampling at Building 351A occurred in the late fall of 2008.¹⁸ Yet, the second round of remediation did not occur until December 2008, and final confirmatory sampling occurred in January 2009, following a significant break over the winter holiday.¹⁹

5. Petitioner's Allegations Regarding TtEC's Profit Motive Are False.

Petitioner further alleges that TtEC's motive for this alleged wrongdoing at Building 351A was increased profits on a fixed price contract.²⁰ This is untrue. The remediation work in Building 351A was conducted under a cost-reimbursable contract with the Navy, as explained in TtEC's Response.²¹ TtEC conducted the survey and remediation under contract N68711-98-D-5713, CTO 0072, MOD 40, as demonstrated in Exhibit 1 at page 9, section 2.3.2.3.²² That contract, N68711-98-D-5713, was cost reimbursable, as shown in Exhibit 2 at page 9, Section B.²³ Thus,

¹⁴ Oct. 17 Transcript, at p. 33:24.

¹⁵ See Smith Decl. at ¶ 10.

¹⁶ Oct. 17 Transcript, at p. 33:1-2, 34:20.

¹⁷ See Smith Decl. at ¶¶ 8-11.

¹⁸ See Smith Decl. at ¶ 8.

¹⁹ See TtEC Response to 2.206 Petition at p. 20, In. 14 to p. 21, In. 8. and Exhibits 4, 5 and 6.

²⁰ Oct. 17 Transcript, at p. 34:11-17.

²¹ TtEC Response to 2.206 Petition at p. 22, In. 6-10.

²² The exhibits to this letter include confidential documents related to TtEC's contracts with the U.S. Navy and will be provided to the Petition Review Board separately. TtEC hereby designates the exhibits as confidential under 10 C.F.R. § 9.16(a)(4).

²³ A portion of the contract is attached as Exhibit 2. Note that the Final, Final Status Survey Results report for Building 351A was prepared under contract N62473-07-D-3211-0018.

there was no profit motive for TtEC to avoid doing the required remediation, as all costs would be reimbursed.

Petitioner counsel's dishonesty about Smith's allegations are not limited to Building 351A.

6. Petitioner's Allegations Regarding Parcel A Are Implausible, Despite Petitioner's Deceptive Statements.

Petitioner claims that TtEC's Response is inaccurate regarding Cs-137 sampling, but again, counsel misrepresents the facts. TtEC's Response accurately states, based upon an internal TtEC review of available 2009 data, that the highest Cs-137 concentration measured in 2009 was 1.0335 pCi/g. Petitioner claims that TtEC both "unknowing[ly] undercuts their claim" and "appears to have tried to pull one over on the NRC" by submitting a report showing that other, unrelated samples demonstrated higher Cs-137 concentrations.²⁴

Petitioner's allegations are baseless. The sample Petitioner refers to (Sample 282) was taken nearly a year earlier than the sample alleged by Smith (in July or August 2009),²⁵ inside a building known to contain contamination, and in an area distant from the alleged Parcel A Sample. Specifically, Sample 282 was taken in the crawlspace area of Building 351A, an area known to have contained radioactive contamination as a result of leaking drain lines contaminated by historical National Radiological Defense Laboratory activities.²⁶ In contrast, Smith claims the alleged Cs-137 sample he took came from an open area next to a road in Parcel A, which as Smith himself states, was not an area known to contain historical contamination.²⁷ The concentration of higher Cs-137 in Sample 282 does not support Petitioner's implausible allegations regarding the collection of a sample on "Parcel A."

7. An Isolated Issue with Conveyor Belt Scanning Speeds Was Addressed with Navy Concurrence and All Affected Soil Was Re-Sampled and Scanned with Navy Approval.

Petitioner also made numerous false statements regarding the conveyor belt that was used for scanning potentially impacted soils at the Site. As explained in TtEC's original response, TtEC addressed a limited conveyor scanning speed issue with the Navy in 2006.²⁸ TtEC took these concerns seriously, reported them to the Navy, and all potentially impacted soil was rescanned. No other abnormalities were discovered.

Notably, very little of the soil processed under TtEC's contracts was done via the conveyor belt, due in part to site practicalities and because of issues with conveyor processing, including difficulties with maintaining proper soil thickness and handling wet soil. The vast majority of potentially contaminated soil was scanned via Radiation Screening Yards, where soil was

²⁴ Oct. 17 Transcript, at p. 35:21-24, 36:13-15.

²⁵ See Smith Decl. at ¶ 12.

²⁶ See NAVSEA, *Hunters Point Shipyard Final Historical Radiological Assessment History of Use of General Radioactive Materials 1939-2003* (2004), at p. 8-98 to 8-99, available at https://bracpmo.navy.mil/content/dam/bracpmo/california/former_naval_shipyard_hunters_point/pdfs/all_documents/environmental_documents/radiological/hps_200408_hra.pdf.

²⁷ Smith Decl. at ¶ 12.

²⁸ See TtEC Response to 2.206 Petition at p. 12, In. 5-11 and fn. 38.

spread thinly across the surface of a screening pad and then scanned with a towed array and/or hand scanning. Soil that exceeded established clearance levels was appropriately disposed of as Low Level Radioactive Waste. The portal monitor acted as a final check on scanned soil departing HPNS.

Discovery of a small, contaminated button at the portal monitor in May 2006 led TtEC to shut down all soil scanning, at both the conveyor and screening yards, and conduct a complete review of all procedures and refresher training for all employees involved in scanning, as documented in attached Exhibits 3 and 4. There was nothing inappropriate about this response to the scanning issues. These types of issues are common on large-scale projects, and TtEC's response—which included re-scanning the soil that was potentially impacted by the conveyor speed issue and involved surface scanning stockpiles, random soil sampling for laboratory analysis, as well as hand scanning—was approved by the Navy.

Petitioner alleges that Robert McLean's declaration shows "Tetra Tech management went and sped up the belt" and that "they setup a cage and locked the belt guide" so the speed could not be appropriately adjusted.²⁹ However, McLean's declaration does not mention any "cage."³⁰ In fact, a rheostat device was installed for positive control of the belt speed in order to maintain the belt at a speed within identified tolerances.³¹ Petitioner's suggestion that the normal operation of the conveyor belt is evidence of malfeasance is yet another willful attempt to deceive the Petition Review Board.

Petitioner also falsely claims that soil was inappropriately re-scanned using large scoops at the direction of Justin Hubbard, whom TtEC put in charge.³² Yet, in 2006, Hubbard was not a TtEC employee—he was hired by TtEC on March 3, 2008.

Furthermore, in 2006, New World Environmental, as the Navy's chosen radiological remediation contractor,³³ was in full control of the radiological procedures onsite. New World had the authority and obligation under its invoked NRC license to address any deviation or deficiency in radiological procedures during this time period.

8. Changes in Portal Monitor Procedures Allowed for a Large Margin of Safety and Were Approved by the Navy.

Petitioner also falsely claims that TtEC "altered the portal monitor procedures" to allow radiologically contaminated soil to leave the Site.³⁴ In fact, the changes to portal monitor procedures retained a large margin of safety for soil leaving the Site and were approved by the Navy.

Prior to September 2011, the Navy contractor responsible for transporting and disposal of soil changed. Following this change, the trucks used to carry soil offsite were no longer made of

²⁹ Oct. 17 Transcript, at p. 26:24-27:5.

³⁰ See *generally* McLean Decl., attached as Exhibit N to the Petition. McLean alleges only that the conveyor belt speed was locked and belt speed could not be changed. *Id.* at ¶ 11.

³¹ See Exhibit 4 at p. 3-4.

³² Oct. 17 Transcript, at p. 28:2-4.

³³ See TtEC Response to 2.206 Petition at p. 12, In. 22 to p. 13, In. 12, fn. 35 and Exhibit 1.

³⁴ Oct. 17 Transcript, at p. 18:22-19:1.

steel as they previously had been, but were instead constructed of aluminum. The change to aluminum siding resulted in frequent false alarms at the portal monitor.

Every soil truck (as well as other equipment) was required to proceed through the portal monitor as it exited HPNS, to ensure that the departing soil did not contain unacceptable levels of radioactivity. Procedure required that if a truck triggered the alarm, it was required to re-enter the portal monitor for a second and third scan and was to undergo hand scanning if the truck alarmed the portal monitor twice. Only if the truck passed the follow-on scanning procedures would it be released from the Site, as that indicated the initial alarm was a false positive. Following the change to aluminum sided trucks, additional portal monitor scans and hand scanning often showed no issue with the soil, indicating a false alarm. These false alarms were likely the result of naturally occurring, background radiation present in HPNS soils. After the additional scans came up negative, trucks were allowed to leave the Site, but these false alarms resulted in significant standby time and delays for the Navy's soil removal contractor, who complained to TtEC and the Navy concerning the frequent false alarms.

To address these issues, TtEC consulted with the Navy Radiological Affairs Support Office (RASO), and together they determined that slightly altering the portal monitor's sensitivity would both ensure that no contaminated soil was departing the Site and decrease the number of false alarms, while also increasing efficiency, thus saving taxpayer dollars. The portal monitor detector alarm set point was raised from 6.0 to 8.5 deviations above background. This change was discussed with, and approved by, the Navy. The change in procedure was documented, as shown in Exhibit 5,³⁵ and that documentation was submitted to the Navy, as demonstrated in Exhibit 6.

9. There Is No Evidence that Contaminated Soil Was Backfilled at HPNS or Shipped Offsite.

Petitioner also falsely claims that TtEC engaged in "false remediation of soil, with radiologically hazardous soil ending up backfilled at Hunters Point and shipped offsite,"³⁶ and that "radioactive contamination [spread] all over Northern California."³⁷ These are serious allegations, yet Petitioner presents no evidence that any contaminated soil was shipped offsite.

Petitioner's statements ignore the facts: all soil was scanned and sampled before leaving HPNS or being placed as backfill; the Navy oversaw and approved all soil scanning and sampling procedures; and the portal monitor properly functioned as a final check on soil leaving the Site. As explained above, Petitioner also misrepresented facts regarding the approved alterations to the portal monitor. Despite numerous regulatory agency reviews, there is simply no evidence that contaminated soil left HPNS.

³⁵ Note that this change is documented for Alameda Point, but these procedures applied to the portal monitor at HPNS as well.

³⁶ Oct. 17 Transcript, at p. 17:19-21.

³⁷ Oct. 17 Transcript, at p. 18:6-8.

10. The Navy's Review of Site Data Did Not Confirm Data Manipulation at the Site.

Petitioner repeatedly claims that the Navy, EPA, California Department of Public Health (CDPH) and California Department of Toxic Substances Control (DTSC) have confirmed that TtEC committed massive fraud across HPNS. Petitioner states that "[m]assive fraud and malfeasance by Tetra Tech has been confirmed by these government agencies from the data review."³⁸ This is simply not true.

The only confirmed fraud is that admitted to by Justin Hubbard and Steven Rolfe—admissions that the NRC is aware of and previously investigated, and that the Department of Justice has thoroughly investigated. The draft reports prepared by Navy consultants that Petitioner cites—which are themselves deeply flawed and unscientific—are directed only at finding "potential evidence" of "potential" data falsification or manipulation. The Navy reviews did not find evidence of fraudulent sampling (and could not do so, given their flawed methodology).

The Navy, along with guidance from appropriate state and federal regulators, is developing sampling plans to determine whether remediation goals were met across HPNS. Misinterpreted draft, internal Navy and regulatory commentary do not establish that TtEC, or its employees, engaged in any fraud as alleged by Petitioner.

11. TtEC Did Not Compile a Report for Release of Parcel A.

Petitioner claims that "Tetra Tech did not want the Parcel A sample revealed because Tetra Tech earlier reported to the Navy that Parcel A was clean and had no radioactive material on it."³⁹ As noted in footnote 1, Tetra Tech, EC, Inc. (TtEC) is an independent subsidiary of Tetra Tech, Inc. A separate and distinct division of TtEC's parent corporation, Tetra Tech EM, Inc., contracted with the Navy to prepare a report concerning Parcel A.

TtEC had no part in preparing the report that Tetra Tech EM, Inc. produced. The two entities are independent and have distinct business functions—TtEC is an environmental construction company and was hired by the Navy for that purpose.

Petitioner's allegations that somehow TtEC wanted to cover up for another corporate entity is merely conjecture, completely unsupported by any evidence, and is false. Moreover, multiple independent analyses of Parcel A have shown that the area is safe, and the regulatory agencies continue to conclude as much.⁴⁰

12. There Is No Identified Health Risk to Any HPNS Workers or the Public.

Petitioner claims that TtEC's actions put the health and safety of residents and workers at risk,⁴¹ yet all regulatory agencies have deemed the residential areas safe,⁴² and TtEC ensured that all onsite workers were adequately protected from any onsite radiological harm. As the NRC is

³⁸ Oct. 17 Transcript, at p. 20:25-21:2

³⁹ Oct. 17 Transcript, at p. 37:16-25.

⁴⁰ See TtEC Response to 2.206 Petition at p. 29, ln. 26 to p. 30, ln. 1 and fn. 101.

⁴¹ Oct. 17 Transcript, at p. 20:3-15.

⁴² See TtEC Response to 2.206 Petition at p. 29, ln. 26 to p. 30, ln. 1 and fn. 101.

aware, TtEC takes its workers' safety very seriously, and TtEC repeatedly passed NRC inspections with little to no reports or incidents.

Moreover, the concentrations of radioactivity present at most sites at HPNS where TtEC conducted work were incredibly low—often near background levels. Petitioner's assertions that work clothes or other items removed from the Site would have contained dangerous levels of radioactivity,⁴³ or that areas were "incredibly contaminated,"⁴⁴ is baseless, unscientific claptrap.

The Navy Base Realignment and Closure (BRAC) Program recently responded to allegations concerning contamination and cleanup levels at HPNS, and demonstrated that the remediation goals at HPNS are far more protective than EPA standards and designed to be protective of human health by a wide margin.⁴⁵ The Navy's response included a side-by-side comparison of the HPNS cleanup levels to current EPA standards.⁴⁶ While Petitioner implies that a Building 351A Cs-137 sample (which was later appropriately remediated) of nearly 2 pCi/g was a serious health risk,⁴⁷ in reality the EPA's preliminary remediation goal is 1,290 times higher.⁴⁸

Petitioner also conveniently ignores that TtEC is not responsible for the contamination at this Site. TtEC contracted with the Navy to remediate in accordance with Navy standards and contract requirements. Yet, Petitioner references community health concerns that have allegedly plagued the surrounding community for years.⁴⁹ These concerns existed long before TtEC was brought in to support the cleanup of contamination at HPNS.

While isolated misconduct by two former TtEC employees was identified, TtEC worked alongside the Navy and appropriate regulatory agencies, including the NRC, to ensure that misconduct was adequately addressed and was not repeated. TtEC continues to cooperate with these regulatory agencies and investigators to address all allegations of misconduct.

Petitioner should play no role in that process. Petitioner and its counsel have demonstrated a willingness to exaggerate and fabricate evidence and selectively and misleadingly misrepresent facts, when there is no evidence to support Petitioner's claims. No additional, credible information was provided by Petitioner to the Petition Review Board. Thus, for the reasons stated herein, and previously stated in TtEC's Response to the Petition, the NRC should not accept Petitioner's 2.206 Petition to Revoke TtEC's license.

⁴³ Oct. 17 Transcript, at p. 20:16-20.

⁴⁴ Oct. 17 Transcript, at p. 26:17.

⁴⁵ See Navy response about external report on Hunters Point Naval Shipyard Cleanup Standards (Oct. 31, 2018), *available at* https://www.bracpmo.navy.mil/brac_bases/california/former_shipyard_hunters_point/timely_topics.html.

⁴⁶ *Id.* at "attached table."

⁴⁷ See Oct. 17 Transcript, at p. 36:19-38:3.

⁴⁸ Navy Oct 31, 2018 response, at "attached table" identifying the Cs-137 2018 EPA Preliminary Remediation Goal as 2,580 pCi/Gram.

⁴⁹ Oct. 17 Transcript, at p. 53:13-21.

Petition Review Board
November 9, 2018
Page 9

Very truly yours,

A handwritten signature in blue ink, appearing to be 'DP', with a horizontal line extending to the right.

Davina Pujari

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