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12 AND ENVIRONMENTAL JUSTICE

13 **UNITED STATES NUCLEAR REGULATORY COMMISSION**

14 **Before the Executive Director for Operations**

16 GREENACTION FOR HEALTH AND
17 ENVIRONMENTAL JUSTICE,

18 Petitioner,

19 v.

20 TETRA TECH EC, Inc.

21 Licensee.
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10 C.F.R. § 2.206 PETITION

TO REVOKE MATERIALS

LICENSE NO. 29-31396-01;

REPLY TO TETRA TECH RESPONSE

1 **I. INTRODUCTION**

2 Greenaction for Health and Environmental Justice (“Greenaction”) respectfully submits
3 this Reply to Tetra Tech EC, Inc.’s Response to Greenaction’s 10 CFR § 2.206 Petition to Revoke
4 Materials License No. 29-31396-01. A hearing is scheduled for October 17, 2018.

5 The issue now is whether the Hearing Board should recommend a hearing to proceed on
6 the Petition to the Director of Operations that would determine whether Tetra Tech’s license
7 should be revoked. This is the parties’ last chance to provide information not previously submitted
8 to the NRC prior to the Hearing Board’s recommendation. Significantly, Tetra Tech’s response
9 makes no affirmative arguments – not one – that Tetra Tech deserves to keep its license. Tetra
10 Tech offers nothing new, just the same old tune it has been singing since 2012: “What’s the big
11 deal? So we committed a little fraud. So what?”

12 The response gives short shrift to the factual allegations made in the Petition and its
13 accompanying three Supplemental Filings. While the Petition is supported by consistent, cross-
14 corroborating eyewitness testimony provided under penalty of perjury, Tetra Tech’s defense
15 consists of conjecture and unsupported, bald arguments. The Petition is further supported by
16 technical reviews of the Tetra Tech data by the Navy, the US Environmental Protection Agency
17 (“EPA”) and the State of California Department of Toxics Substances and Department of Public
18 Health (“CDPH”), which all concluded that Tetra Tech engaged in substantial falsification of its
19 work. Tellingly, the response is supported by nary a single sworn statement. Instead, even in the
20 limited instances Tetra Tech addresses the facts raised in the Petition, it employs obfuscation,
21 outright fabrication, and non-sequiturs. For example, Tetra Tech makes the truly eye-popping
22 assertion that its employees could not possibly have engaged in fraud because it was against Tetra
23 Tech policy. According to this theory, Tetra Tech employees could not ever commit fraud. Yet
24 Tetra Tech’s response has no choice but to admit: 1) the fraud took place; and 2) Tetra Tech’s
25 highest ranking on-site radiological supervisors pled guilty to felony charges related to the cleanup
26 fraud and went to prison.

27 These admissions alone are sufficient cause for the NRC to revoke Tetra Tech’s license.
28 But the evidence of widespread fraud is overwhelming, it was sustained over many years and has

1 been actively covered up ever since. The response in fact demonstrates that Tetra Tech takes no
2 responsibility for the fraud, the very first step to ensure that it will not recur, but continues to
3 peddle the fiction that the fraud was narrowly limited, contrary to all evidence.

4 The NRC should demonstrate to Tetra Tech the serious duty a licensee undertakes when it
5 receives a license: commit fraud, whether it is the limited amount Tetra Tech cannot deny or the
6 massive fraud described by the agencies' data reviews and detailed under oath by those who
7 committed it, and you lose your license.

8 9 **II. STATEMENT OF SUPPLEMENTAL FACTS**

10 **A. The Navy's Victim Impact Statement Demonstrates The Impact of the Fraud Is 11 Extensive**

12 The Petition demonstrates that Tetra Tech's top on-site radiological supervisors, Steven
13 Rolfe and Justin Hubbard, directed the fraud. On March 15, 2017, Rolfe pleaded guilty to federal
14 felony charges of falsifying documents.¹ On May 10, 2017, Justin Hubbard also pled guilty.²

15 They "admitted that, rather than take samples from the intended survey units undergoing
16 analysis, they participated in the substitution of dirt that was 'clean' (containing acceptable levels
17 of radionuclides) fraudulently taken from other areas within the former naval base."³

18
19 As part of his plea agreement, Hubbard admitted that during 2012, he drove his company
20 truck to an area outside the marked survey unit that he was tasked with remediating, and
21 filled a bucket with clean dirt that he then substituted for legitimate soil samples. He then
22 placed bar code stickers on the bags of dirt that misidentified the locations from where the
23 samples were obtained. Hubbard acknowledged that he knew he was falsifying data that
24 would ultimately be submitted to the U.S. Navy to demonstrate the area had been
25 successfully remediated. Hubbard specifically admitted that on May 31, 2012, he
26 fraudulently switched soil samples for four survey units at the former naval shipyard.

27 Rolfe admitted that he directed employees on his team to get clean dirt from outside the
28 appropriate marked survey units and to substitute this clean dirt for legitimately collected

29 ¹ Department of Justice Press Release, p. 1.

30 ² *Id.* at p. 2.

31 ³ Department of Justice Press Release, p. 2.

1 samples. Rolfe estimated that he told his subordinates to obtain clean dirt in this manner on
2 approximately twenty occasions in 2012. Rolfe further admitted that during this period, he
3 observed forms containing this false information being filled out on between ten and
4 twenty occasions. Rolfe admitted that on one occasion in August 2012, he personally
5 falsified data on a tracking sheet to suggest that a sample of soil came from an area that he
6 knew it did not.⁴

7 The Victim Impact Statement for Hubbard’s sentencing submitted by Laura Duchnak, the
8 Navy’s Director of the Base Realignment and Closure Program, Program Management Office
9 (“BRAC PMO”), detailed the substantial impact the fraud has had on the cleanup thus far.⁵
10 Duchnak stated that, because of Tetra Tech’s fraud, “the Navy and the regulatory agencies have
11 determined that Tt EC’s work is unreliable.” She continued:

12 The fraud has also caused a loss of confidence by the regulatory community (both EPA
13 and California State regulators) regarding the Navy’s radiological remediation program and
14 the Navy’s competence to implement it. The EPA has expressed to the Navy that they no
15 longer have confidence in the work performed by TtEC at HPNS; as well as at other Navy
16 radiological sites including those located at Treasure Island and Alameda in the San
17 Francisco Bay Area.

18 Similarly, “[t]he fraud and uncertainty surrounding Tt EC’s work at HPNS has caused a complete
19 loss of trust in the Navy by the local community.”⁶

20 As of March 2018, she stated, the Navy had paid Tetra Tech \$272.8 million for the
21 fraudulent “work” of Tetra Tech.⁷ The cost of the fraud is staggering:

22 Depending on the cost of required re-work, this number will certainly rise to \$372.8 M and
23 is likely to rise as high as \$572.8 M. This amount of money would buy a new Littoral
24 Combat ship. It is nearly half of the Navy’s total expenditures for *all* environmental clean-
25 up activities at HPNS through fiscal year 2017 (\$991.1 M).⁸

26 Areas that were considered remediated, including areas previously transferred by the Navy to San
27

28 ⁴ *Id.*

⁵ Victim Impact Statement in the Matter of *United States v. Hubbard*, p. 3

⁶ *Id.*

⁷ *Id.* According to the Navy, this figure includes the costs of discovering and investigating the fraud and preventing future fraud.

⁸ *Id.*

1 Francisco, will have to be retested for contamination, she stated.⁹ Duchnak also wrote, “The fraud
2 and uncertainty surrounding Tt EC's work at HPNS has caused a complete loss of trust in the Navy
3 by the local community.” *Id.* Truer words have never been spoken.

4 **B. New Evidence of Parcel A Radiological Impact**

5 Greenaction has provided the Navy and regulators with credible evidence of radiological
6 impacts in Parcel A, parts of which are now inhabited. The parcel was released for unrestricted use
7 and transferred to the City and County of San Francisco in 2004, based on a *Final Survey Report*
8 written by none other than Tetra Tech. The Navy has yet to explain how Parcel A, which it assured
9 the public for more than a decade was never radiologically impacted, could have had contaminated
10 sewer systems removed without any radiological screening.

11 Greenaction has provided evidence that on February 2, 2004, Bert Bowers, Tetra Tech’s
12 former Radiation Safety Office (“RSO”), took samples from the Parcel A stormwater and sanitary
13 sewer systems, one sample for each. (Copies of the sampling documents are attached as Exhibit 1.)
14 Analytical results indicated elevated radium.²²⁷ Since the samples showed elevated radium levels
15 the sampling documents that the presence of radium – and other radioactive substances – should
16 have been investigated. At that time, Tetra Tech was the prime contractor responsible Parcel A
17 and the work of its sub-contractors. The investigation never happened. In May 2018, Greenaction
18 conducted a Parcel A walk-through directed by to show the Navy and regulators the approximate
19 locations of his 2004 sampling effort.

20 The sewer systems and associated soils were excavated prior to development of Parcel A.
21 Greenaction has long urged the Navy and EPA to investigate to determine who removed the
22 sewers and soils and the disposition of the materials. Both have refused. Greenaction has also
23 asked the Navy to conduct comprehensive soil sampling of the Parcel and has urged EPA to
24 require it. So far, neither the Navy nor the EPA has responded.

25 Understandably, the release of the Parcel A sampling results caused uproar in the
26 community, including among members of the San Francisco Board of Supervisors, which held a
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28 ⁹ *Id.*

1 hearing on the matter on May 14, 2018.¹⁰ In response, although the evidence was that
2 *underground* sewers needed to be investigated by taking subsurface soil samples, the Radiological
3 Health Branch (“RHB”) of the California Department of Public Health (“CDPH”) agreed to
4 conduct a *surface* scan of portions of Parcel A, excluding slopes, hillsides, and area with
5 vegetation over 4 inches high. There is an obvious disconnect between proof of underground
6 radiological impact and surface scanning, so CDPH’s efforts answer none of the questions raised
7 by the results of Bower’s sampling.

8 In addition, on or about the second week of September, 2018, the California Radiological
9 Health Branch found a highly radioactive “deck marker” about ten inches below the ground
10 surface, merely yards from occupied residences.¹¹ Similar to the Navy’s lack of explanation
11 provided for the contaminated sewer systems, the Navy has not explained how the deck marker
12 got to Parcel A in the first place. It has refused to take even the most minimal steps to determine if
13 other deck markers or other radioactive materials are located under the surface of Parcel A.
14 Rather, the Navy’s attitude has mirrored Tetra Tech’s to the dismay of nearby residents and city
15 politicians: “What’s the big deal?”

16 It should go without saying that evidence of radiological impact so near occupied
17 residences should be fully investigated. Yet the Navy says it’s not the Navy’s problem.

18 **C. Greenaction Has Filed a Petition to Revoke Tetra Tech’s State Radiological** 19 **License**

20 Greenaction filed a Petition to Revoke Tetra Tech’s California radiological license on or
21 about July 26, 2018, based on the evidence contained in the NRC Petition and augmented by the
22 information in the three Supplemental Filings and facts developed since then. To date CDPH has

23 ¹⁰ See: <https://www.nbcbayarea.com/news/local/San-Francisco-Supervisors-Kick-Tetra-Tech-Official-Out-of-Hearing-on-Hunters-Point-Cleanup-Scandal-482623631.html>

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25
26 ¹¹ See: <https://www.sfchronicle.com/bayarea/article/Radioactive-object-found-near-homes-at-Hunters-13228476.php>. Tetra Tech conveniently buries this finding in the exhibits to its Response
27 but fails to acknowledge it its discussion of Parcel A.

1 taken no action.

2
3 **III. ARGUMENT**

4 **A. Tetra Tech Plays Fast and Loose With the Facts**

5 The Response brief is characterized by false assertions and selective but significant
6 omissions. At the very same time Tetra Tech attacks the sworn statements supporting the Petition
7 as implausible lies, it tells a few whoppers of its own.

8 **i. Tetra Tech’s Whitewash *Anomalous Samples Report***

9 Tetra Tech claims credit for conducting a thorough investigation of itself despite all
10 subsequent evidence demonstrating it was a self-serving whitewash. And Tetra Tech might very
11 well have gotten away with its whitewash and coverup but for subsequent attention to the fraud,
12 including through this Petition. The Navy chose to cling to Tetra Tech’s self-exoneration so it
13 could plow forward with its only real goal: transferring the property as soon and as cheaply as
14 possible. EPA and the other regulators went along.

15 Even now, in the response, Tetra Tech continues to whitewash the *Anomalous Samples*
16 *Report*, consistently misrepresenting the inquiry that resulted in it. For example, Tetra Tech claims
17 that all allegations were “thoroughly investigated by Tetra Tech.”¹² But Tetra Tech was anything
18 but thorough. It asserts it conducted “in-person interviews” involving “repeated questioning”¹³ of
19 employees, including Judson and Rolfe.

20 But somehow the questioning failed to detect anything wrong. Exhibit 9 of the *Anomalous*
21 *Samples Report*, “Personnel Interviews,” demonstrates why: the “investigation” asked the wrong
22 questions, never showed employees any documents such as fraudulent chain-of-custody forms
23 they signed, did no follow-up, and simply accepted what the company was told with apparently no
24 effort at all to verify the interviewees’ truthfulness. Witnesses lied with impunity. For example,
25 Steven Rolfe told Tetra Tech, “He had no theories, and was not aware of any improprieties.
26 Nobody directed him to do anything illegal.” Tetra Tech simply accepted this as true when it was

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12 Tetra Tech EC, Inc.’s Response at p. 2, ln. 10.

28 13 Tetra Tech EC, Inc.’s Response at p. 7, ln. 9-12.

1 facially and wholly false.

2 Another blatant misrepresentation is Tetra Tech’s statement that further NRC action is
3 unwarranted because the Petition is based “solely [on] Petitioner's and declarants' willingness to
4 lie to the NRC for financial gain.”¹⁴ This is simply not true. As further addressed below, claims of
5 perjury and suborning perjury are false. Furthermore, the Petition is based not only on the
6 declarations, but on the Navy data reviews of soil sampling results (First and Second
7 Supplemental Filings), as well as the data review of building surveys and the EPA’s critique of the
8 Navy’s data review (Third Supplemental Filing).

9 Tetra Tech claims the NRC investigation into the soil-sampling fraud “confirmed” that the
10 fraud was limited to a single radiation control technician and a single supervisor.¹⁵ However, since
11 not one but two supervisors pleaded guilty to criminal charges, it is abundantly clear that to the
12 extent the NRC confirmed no such thing. In addition, contrary to Tetra Tech’s claim that the
13 Petition did not present new significant information,¹⁶ the Petition brought the NRC eyewitness
14 and documentary evidence that the fraud was much more extensive and took place over a much
15 longer period than the NRC’s previous investigations uncovered.

16 **ii. The Response’s Attack on the Navy’s Data Review Is Unsupported by Any**
17 **Evidence**

18 Tetra Tech concludes that any wrongdoing that occurred under its oversight was
19 sufficiently handled in its self-investigation and only perpetrated by the two individuals who were
20 indicted by the U.S. Department of Justice.

21 Tetra Tech not only ignores facts sworn to by those who committed fraud beyond that
22 committed by the two, but it also mischaracterizes the Navy’s data review, claiming multiple and
23 completely factually unsupported defects. And, incredibly, Tetra Tech betrays its bad faith by
24 omitting any mention that the EPA is finally taking the fraud seriously and issued a devastating
25 review of the Tetra Tech data that found it virtually worthless. Not one mention – no mention

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27 ¹⁴ Tetra Tech EC, Inc.’s Response at p. 2, ln. 21-22.

28 ¹⁵ Tetra Tech EC, Inc.’s Response at p. 14, ln. 9-12.

¹⁶ *Id.*

1 either of the Navy’s subsequent admission, after six years of denial as adamant as Tetra Tech’s,
2 that virtually all Tetra Tech’s data are *unreliable*, and all Tetra Tech’s alleged remediation must be
3 redone.¹⁷

4 In truth, the purpose of the Navy’s data review was to *validate* Tetra Tech’s data and
5 support its claims the fraud was narrowly limited. Instead, the Navy’s review found potential
6 evidence of fraud that was much more widespread than even the whistleblowers said; about 40%.
7 As if that was not bad enough, EPA, the California Departments of Toxics Substances Control
8 and Public Health’s reviewed exactly the same Tetra Tech data and concluded the Navy
9 underreported data problems by about half: it found 97% of the soil-sampling data in Parcel G had
10 data quality issues!¹⁸

11 It also claims the Navy’s methodology is deeply flawed, the analysis is based on arbitrary
12 logic tests that are “scientifically unsound” and “do not find actual evidence of data
13 manipulation.”¹⁹ But where is the evidence – any evidence – in support of these bald conclusions?
14 Where is the analysis of the “deep flaws” in the methodology? Where is expert statistician
15 testimony proving the logic tests are arbitrary? Where is there even the barest statement of why the
16 data review is “scientifically unsound?” Who does not “find actual evidence of data
17 manipulation?” And why? Tetra Tech never says.

18 The Response fails to provide even a single supporting fact for its assertions. In short,
19 Tetra Tech has had ample opportunity to submit scientific data in support of its blanket attack on
20 the Navy and EPA reviews. That it has not speaks volumes. It cannot.

21 Tetra Tech also conveniently omits other data review findings that corroborate the sworn
22 witness statements: “evaluation of Parcel E soil data found evidence that potential manipulation
23 and falsification *was not limited* to the survey units addressed by TtEC in their *Investigation*
24 *Conclusion Anomalous Soil Samples* report.”²⁰ A separate report based on the review of building

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26 ¹⁷ See U.S. EPA letter to the Navy.

27 ¹⁸ See Third Supplement Filing to Greenaction’s Petition.

28 ¹⁹ See *id.* at ll. 12-13

²⁰ Findings Report for Parcel E Soil at p. 4-31.

1 scans performed by Tetra Tech also concluded “the surveys have been falsified and cannot be used
2 to support a recommendation for unrestricted radiological release.”²¹

3 In short, Tetra Tech offers no credible defense to the proof of fraud in the Petition and no
4 good reasons it should be allowed to retain its license.

5 **iii. Sworn Witness Statements**

6 **a. There Is No Evidence Bowers, Jahr, Andrews and Jackson Made False
7 or Implausible Statements**

8 Tetra Tech asserts the witness statements are “demonstrably false or, so implausible that
9 anyone with even a passing familiarity with the investigation and remediation of contaminated
10 property would know they are not true.”²²

11 Tetra Tech promises much more than it delivers.

12 First, it claims “statements,” plural, are false or implausible. But the Response actually
13 only argues that a single witness, Anthony Smith, made a single false statement, that he took the
14 Parcel A cesium sample. Tetra Tech only cites a single implausible statement – that Smith had
15 access to areas he was not supposed to be in. Scrutiny proves Tetra Tech wrong. As stated below,
16 the whole of Tetra Tech’s argument about implausibility rests on a fundamental
17 mischaracterization of Smith’s testimony.

18 None of the other witnesses are accused of making false or implausible statement. The
19 closest Tetra comes is to report that the NRC was “unable to substantiate” Bert Bower’s
20 complaint,²³ it found “insufficient evidence” of Art Jahr’s,²⁴ and it was “unable to validate”
21 complaints by Susan Andrews and Archie Jackson.²⁵ The NRC could not validate their complaints
22 because, its investigations were woefully inadequate, just as alleged in the Petition. The more
23 information that comes out, the clearer this is.

24 _____
25 ²¹ Building Radiation Survey Data Initial Evaluation Report at p. III (emphasis added).

26 ²² Tetra Tech EC, Inc.’s Response at p. 10, ln. 6 – 9.

27 ²³ Tetra Tech EC, Inc.’s Response, p. 6, ln. 10.

28 ²⁴ Tetra Tech EC, Inc.’s Response, p. 6, ln. 1.

²⁵ Tetra Tech EC, Inc.’s Response, p. 6, ln. 16.

1 **b. Tetra Tech’s Attack on Anthony Smith Mischaracterizes His Testimony**

2 **i. Building 351A**

3 There is no basis to question what Smith said about Building 351A. Smith acknowledges
4 the use of the vacuum truck. He also says that Bill Dougherty refused to rent it again even though
5 it was necessary. Tetra Tech’s Reply actually substantiates what Smith said when it acknowledges
6 Dougherty ultimately refused to re-rent the vacuum truck.²⁶

7 It is true, as Tetra Tech says, that the final status survey samples did “report” the
8 remediation goals were met. But that was only because the sample with an elevated reading was
9 discarded and Smith was directed to replace it.²⁷ It is also true that samples were normally
10 maintained in a secure area; however, Smith states he was given the sample at the direction of
11 Dougherty. Smith did not have to go get it from a secure area as Tetra Tech claims.²⁸ Tetra Tech’s
12 report that remediation goals were met is based on fraudulent data.

13 **ii. Parcel A**

14 Tetra Tech claims that the Parcel A sample taken by Anthony Smith that came back with
15 elevated levels of cesium-137 was never actually taken, merely because it was not logged. But
16 according to Smith’s testimony, there never was any chain of custody document for the sample.²⁹
17 Although normal procedure was to log samples, this particular sample was anything but normal.

18 Tetra Tech also claims the cesium¹³⁷ reading of 2-3 picocuries per gram (pCi/g) could not
19 be true because it was such a high reading and would have triggered management’s attention.
20 What it fails to acknowledge is that management was notified. It was Justin Hubbard, Tetra Tech’s
21 supervisor, who directed Smith to destroy the Parcel A sample.³⁰

22 Respondent once again makes the truly inane argument that standard management
23 practices prevented the whole incident from happening. On the contrary, several witnesses
24 _____

25 ²⁶ See Declaration of Anthony Smith at ¶ 10.

26 ²⁷ *Id.*

27 ²⁸ *Id.*

28 ²⁹ See Declaration of Anthony Smith, p. 6, ln. 5.

³⁰ *Id.*, p. 6, l. 11.

1 testified there was a culture of cutting corners directed by Tetra Tech’s Project Manager Bill
2 Dougherty and Construction Superintendent Dennis McWade.

3 Tetra Tech asserts, “[t]he CDPH's sampling will undoubtedly confirm that Smith is lying,
4 and that the story he tells about finding elevated Cs-137 concentrations on Parcel A is fictional.”³¹
5 Once again, Tetra Tech displays its ignorance or bad faith: the CDPH scanning involves only
6 limited areas of Parcel A, not including the site where Smith took the sample. In fact, Greenaction
7 made a written request that CDPH add this location to its scanning program. CDPH refused. Thus,
8 contrary to what Tetra Tech says, the CDPH scanning cannot provide any evidence disproving
9 anything.

10 **iii. Building Scans**

11 The *Draft Building Radiation Survey Data Initial Evaluation Report*, dated March 2018,
12 established that data were falsified.³² Significant sections of data were “block copies” from one
13 building site and pasted onto reports for other building sites.³³ The Report also confirmed that at
14 times building scanning was done at an excessive speed, making the machines ineffective in
15 recognizing radiation levels warranting remediation.³⁴ “The overall conclusion of this initial
16 building radiation survey evaluation is that the surveys have been falsified and cannot be used to
17 support a recommendation for unrestricted radiological release for HPNS radiologically-impacted
18 buildings.”³⁵

19 The building survey report is completely consistent with Smith's declaration’s details of
20 data falsification during building.
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25 ³¹ *Id.*, p. 24, l. 1-3.

26 ³² *Building Radiation Survey Data Initial Evaluation Report* at p. III.

27 ³³ *Id.* at p. 6-9

28 ³⁴ *Id.* at p. 8-1.

³⁵ *Id.* at p. III.

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iv. Smith’s Credibility

The Response reports on Smith’s run-ins with the law to cast doubt on the compelling evidence of fraudulent remediation. In fact, his testimony is supported by other declarations. And even if the NRC were to disregard his declaration completely, there would still be ample evidence that Tetra Tech’s committed widespread fraud. The Navy, EPA and state agency data reviews alone, for example, demonstrate Tetra Tech’s data were the data were useless, more than enough to revoke its license.

B. Tetra Tech Must Be Held Accountable for the Actions of Its Employees in Accord with NRC Policy

C.

As a licensee, Tetra Tech is held to know that “the NRC’s policy [is] to hold licensees responsible for the acts of their employees and . . . the NRC will cite the licensee for violations committed by their employees and contractors.”³⁶ Yet the Response argues the NRC should ignore its policy, purportedly because the fraud was narrowly limited and it took “corrective action.” But the fraud was not narrowly limited. And the “corrective actions” taken by Tetra Tech were far too late.

D. Tetra Tech Is Responsible for All of the Fraud

Tetra Tech claims the fraud took place in large part prior to invoking its NRC license in March 2009. Because a subcontractor held the license for work performed before then, it asserts, the section 2.206 hearing should be limited to Tetra Tech’s radiological work subsequent to March 2009.

First, whether its radiation workers were technically employed by Tetra Tech or its subcontractor, NWE, it was Tetra Tech’s radiological supervisors who supervised their day-to-day work both before and after Tetra Tech invoked its license. It was not NWE supervisors who directed the fraud; it was Tetra Tech’s supervisors that directed the fraud, and Tetra Tech’s management that directed its supervisor. One of those managers, Steven Rolfe, implicated his supervisors:

³⁶ Tetra Tech EC, Inc., Notice of Violation and Proposed Imposition of Civil Penalty, Enclosure 1 at p. 2.

1 Rolfe said in his March 14, 2017, plea agreement that, “my motivation came from pressure
2 applied by the Tetra Tech supervisors.” He also said, “One told me on multiple occasions
3 to ‘get the hell out of that area,’ in reference to a particular survey unit that was not testing
4 clean. Another told me on more than one occasion that we were ‘not remediating the whole
5 goddam site.’” Rolfe said an assistant project manager “told me on numerous occasions to
6 ‘get clean dirt.’”

7 “I understood these statement as a direction to go outside the appropriate survey unit and
8 get dirt from other areas that was known to be clean, that is not containing excessive levels
9 of radiation,” Rolfe stated.³⁷

10 The fraud did not magically cease the day Tetra Tech invoked its license. Nothing changed
11 in the field. The fraud continued because the same supervisors, *under the same pressure to cheat
12 by management* supervised the same Tetra Tech employees and committed widespread fraud.

13 **E. Greenaction’s Petition Under 10 C.F.R.§ 2.206 Is Not Precluded**

14 Tetra Tech argues Greenaction waived an opportunity to intervene by not challenging the
15 Confirmatory Order. Of course, Tetra Tech cites no authority for its assertion.

16 Greenaction did not “disregard” other opportunities to intervene as the Response argues.
17 Greenaction was not an adversely impacted party as defined by NRC rules and therefore lacked
18 standing to intervene in the NRC enforcement action against Tetra Tech.

19 Greenaction conducted a more thorough investigation than the NRC did and developed
20 substantial new evidence the NRC had not previously considered. Tetra Tech alleges incorrectly
21 that Greenaction “waited” eight months to file its Petition.³⁸ To the contrary, Greenaction filed its
22 section 2.206 Petition as soon as it could. But locating witnesses takes time. Finding out what they
23 know takes even longer; as any competent investigator knows it takes multiple interviews to fully
24 debrief a witness. The witness statements were signed between June 3, 2017 and June 27, 2018.
25 The Petition was filed on June 29, 2017, a mere two days after the last declaration was obtained.

26 **F. Tetra Tech’s Attacks on Greenaction’s Attorneys Are Irrelevant**

27 Tetra Tech's Response attacks the integrity of both attorneys representing Greenaction.

28 ³⁷ <http://www.ktvu.com/news/2-tetra-tech-employees-sentenced-to-prison-for-falsifying-soil-records-in-sf-shipyard-cleanup>

³⁸ Tetra Tech EC, Inc.’s Response, p. 15, ln. 2.

1 First, it raises the decades-old State Bar disciplinary history of David Anton. Anton was
2 suspended by the California Bar due to events that took place in the latter half of the 1990's. He,
3 himself reported the violation to the State Bar and fully cooperated with the investigation. He was
4 fully reinstated by the Bar in 2004 and has since practiced without blemish.

5 Tetra Tech also makes the scurrilous accusation that both Greenaction's attorneys, David
6 Anton and Steve Castleman of ELJC, suborned perjury for financial gain. Yet, despite the
7 seriousness of the charge, there is not one single fact cited in support. It is all baseless innuendo.
8 In fact, Tetra Tech does not even try to back up its claim. There is no statement – or even
9 speculation – of how Anton or any of the witnesses might benefit financially. And there is no
10 allegation at all of how Greenaction or Castleman or ELJC could benefit financially because there
11 is none. ELJC represents Greenaction on a pro bono basis.

12 Finally, Tetra Tech says that Greenaction's attorneys "are apparently not familiar with
13 environmental site cleanup."³⁹ Like most of its claims, what is "apparent" to Tetra Tech is untrue.
14 Castleman was the prosecutor who convicted Triple A Machine Shop, the Navy's tenant for ten
15 years after the Hunters Point Naval Shipyard closed, for five felony toxic waste crimes. During
16 that investigation he participated in drafting multiple sampling plans for the shipyard site and he
17 has critiqued multiple sampling plans in other cases as well. It is a minor point, perhaps, but it
18 again illustrates how little Tetra Tech's claims are tethered to facts.

19 **G. The NRC Should Conduct a Comprehensive Investigation**

20 For years, Greenaction has urged the Navy and regulatory agencies to do what Greenaction
21 started but does not have the resources to complete: conduct a competent, comprehensive
22 investigation into the nature and extent of the fraud and its impact on the cleanup by interviewing
23 as many former rad workers who worked for Tetra Tech or its subcontractors at Hunters Point.
24 They continue to refuse.

25 The NRC has the expertise to conduct the investigation that is still so sorely needed. It can
26 get to the bottom of the fraud. It should investigate Tetra Tech's management to determine how
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28 ³⁹ Tetra Tech EC, Inc.'s Response, p. 10, ln. 11.

1 high up the knowledge of and participation in the coverup of the fraud extended.

2 Greenaction urges the NRC to rectify its past inadequate inquiries by conducting a full
3 investigation. No one else has. No one else will. If not the NRC, who?

4

5 **IV. CONCLUSION**

6 Greenaction has provided the NRC with overwhelming proof that Tetra Tech fabricated
7 data, passed off samples as taken from one location when they were actually taken elsewhere,
8 improperly screened soil, lied about the nature and extent of building scans, destroyed samples
9 and data whose results exceeded cleanup standards and covered it all up to the best of its ability, a
10 coverup that the Response continues. Tetra Tech continues to deny its extensive, multiple-year
11 fraud, continuing to jeopardize public health and safety now and for centuries to come, as some of
12 the radiological contaminants have long half-lives.

13 The Nuclear Regulatory Commission should weigh the strength of the evidence presented
14 by the Petition and its Three Supplemental Filings against the paucity of facts offered by Tetra
15 Tech. Revocation of Tetra Tech's license is more than justified. Greenaction respectfully requests
16 that the Hearing Board recommend *a full investigation of the falsification and frauds of Tetra Tech*
17 *and that a hearing be held on the revocation to the Director of Operations.*

18

19 Respectfully submitted,

October 17, 2018

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22 Steven J. Castleman

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