



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

August 24, 2005

Docket No. 03033387
EA No. 05-152

License No. 29-30107-01

Robert Hughes
Regional Chief Executive
U.S. Engineering Laboratories, Inc.
903 East Hazelwood Avenue
Rahway, New Jersey 07065

SUBJECT: INSPECTION REPORT NO. 03033387/2004001, U.S. ENGINEERING LABORATORIES, INC, RAHWAY, NEW JERSEY AND BROOMALL, PENNSYLVANIA; AND OFFICE OF INVESTIGATIONS (OI) REPORT NO. 1-2004-048

Dear Mr. Hughes:

On September 22, 2004, Donna Janda and Kathy Modes of this office conducted a routine safety inspection at your facility located at 903 East Hazelwood Avenue, Rahway, New Jersey and at three temporary job sites in Cranbury, New Jersey of activities authorized by the above listed NRC license. On September 23, 2004, Donna Janda and Kathy Modes visited your Rahway office to inform you of the results of the inspection at temporary job sites. On October 20, 2004, Donna Janda and Kathy Modes of this office conducted an inspection at your facility located at 814 Parkway Boulevard, Broomall, Pennsylvania, as part of the routine safety inspection initiated on September 22, 2004. This inspection was an examination of your licensed activities as they relate to radiation safety and to compliance with the Commission's regulations and the license conditions. The inspection consisted of observations by the inspectors, interviews with personnel, and a selected examination of representative records. The findings of the inspection were discussed with you and your staff on October 27, 2004 at the conclusion of the inspection. The enclosed report provides the results of this inspection.

In addition to this inspection, NRC's Office of Investigations (OI) completed an investigation on June 27, 2005. The purpose of the OI investigation was to determine if employees of U.S. Engineering Laboratories (USEL), Rahway, NJ, made false statements to NRC inspectors regarding storage and security of licensed material. OI concluded that 1) a USEL employee initially made a false statement during the NRC site inspection regarding the storage of licensed material, but later corrected the false statement with the NRC, and 2) a different USEL employee deliberately made false statements regarding the security of licensed material, both orally and in writing. A Factual Summary of the OI report is enclosed.

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Based on the results of the inspection and the OI investigation, it appears that your activities were not conducted in full compliance with NRC requirements. A total of six apparent violations were identified.

1. Failure to provide complete and accurate information to the NRC regarding the security of licensed material in apparent violation of 10 CFR 30.9. Specifically, a USEL employee stated that he had maintained constant surveillance of a portable nuclear density gauge, but later admitted that he was sitting in his vehicle doing paperwork at the time, and for 5 to 10 minutes a piece of construction equipment obscured his view.
2. Failure to maintain direct and constant surveillance of licensed material, in apparent violation of 10 CFR 20.1802 at a temporary job site, and failure to store a gauge at another temporary job site in a locked room inside a trailer, in apparent violation of 10 CFR 20.1801. The details of this violation are found in Sections III and IV of the enclosed Inspection Report.
3. Failure to lock the gauge or its container when in storage in apparent violation of License Condition 16. Details of this violation are found in Section III of the enclosed Inspection Report.
4. Failure to store licensed material at approved storage locations or at temporary job sites in apparent violation of License Condition 10. Details of this violation are found in Section IV of the enclosed Inspection Report.
5. Failure to follow USEL procedures, including failure to wear proper dosimetry and failure to operate a portable nuclear density gauge in a safe manner, in apparent violation of License Condition 20 and USEL's letter dated January 27, 2004. Details of this violation are found in Sections VI and VIII of the enclosed Inspection Report.
6. Failure to transport radioactive material with required shipping papers and emergency response information and to have proper labels and markings in apparent violation of 10 CFR 71.5(a). Details of this violation are found in Section X of the enclosed Inspection Report.

The characterization of the apparent violations may change as a result of further NRC review. Accordingly, no Notice of Violation is presently being issued.

The apparent violations for incomplete and inaccurate information (Item 1 above) and failure to secure licensed material (Item 2 above) are being considered for escalated enforcement in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at www.nrc.gov; select **What we Do, Enforcement**, then **Enforcement Policy**. The NRC requests that you attend a Predecisional Enforcement Conference (PEC) prior to us making an enforcement decision. At the PEC, you will have the opportunity to discuss the apparent violations before an enforcement decision is made by the NRC. This closed and transcribed conference will be held at the Region I Office in King of Prussia, PA.

Since several of the violations were the result of actions of the second employee, we request that this employee attend the PEC.

The decision to hold a PEC does not mean that the NRC has determined that violations have occurred or that enforcement action will be taken. The conference will be held to achieve a common understanding of the facts in the case, obtain appropriate information so that we can determine whether violations occurred, to determine the significance of any violations which did occur, to understand how the violations were identified, and to understand any corrective actions taken or planned by USEL. The conference will provide an opportunity for you to provide your perspective on these matters, including any errors in the inspection reports, and any other information that you believe the NRC should take into consideration in making an enforcement decision. In presenting corrective actions, you should be aware that the promptness and comprehensiveness of your actions will be considered in assessing any civil penalty for the apparent violations. The guidance in the enclosed excerpt from NRC Information Notice 96-28, "SUGGESTED GUIDANCE RELATING TO DEVELOPMENT AND IMPLEMENTATION OF CORRECTIVE ACTION," may be helpful. Our final decision on enforcement action will not be available at the conclusion of the PEC. You will be advised by separate correspondence of the results of our deliberations on all the information pertaining to the violations including that received at the PEC.

You should also be prepared to discuss additional concerns identified by the inspectors which are described in the enclosed Inspection Report. The concerns include: (1) Annual audits were not complete in that they did not include observations at temporary job sites and the auditor did not question higher-than-normal personnel whole body exposures (Section II of the enclosed Inspection Report); and (2) USEL did not initiate investigations into the higher-than-normal whole body exposures received by gauge users until the NRC questioned if the exposures were solely occupational doses. The subsequent investigations did not include dose calculations, radiation measurements, or questions ruling out the possibility that the elevated doses may have been caused by medical treatment or environmental factors (Section VIII of the enclosed Inspection Report). In addition, you should be prepared to discuss the observation of your corporate RSO regarding the RSO's inability to perform all of his duties and responsibilities as well as inadequate staffing of the radiation protection program (see Section II of the enclosed inspection report).

Instead of attending a PEC, you may request alternative dispute resolution (ADR) with the NRC in an attempt to resolve any disagreement on whether these violations occurred and the appropriate enforcement action. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ during a pilot program which is now in effect is mediation. Additional information concerning the NRC's pilot program is described in the enclosed brochure (NUREG/BR-0317) and can be obtained at <http://www.nrc.gov/what-we-do/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program via a neutral party. You must contact ICR at (877) 733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of these issues through ADR.

No response regarding the apparent violations is required at this time. However, you must contact Mr. John D. Kinneman at (610) 337-5252 within 10 days of the date of this letter to

R. Hughes
U. S. Engineering Laboratories, Inc.

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notify the NRC of your decision to either participate in a PEC or pursue ADR. A PEC or an ADR session will generally be held within 30 days of the date of this letter. If you do not participate in either process, we will make an enforcement decision based on the available information.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and enclosed Factual Summary will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The enclosed inspection report discusses your inventories of radioactive material so it will not be publicly available.

Sincerely,

/RA by Francis Costello Acting For/

George Pangburn, Director
Division of Nuclear Materials Safety

Enclosures:

1. Inspection Report No. 03033387/2004-001 **(Not Public in ADAMS)**
2. Factual Summary for OI Report 1-2004-048 (ML052130269)
3. Excerpt from NRC Information Notice 96-28
4. Brochure NUREG/BR-0317

cc:

Martin Mygrant, Radiation Safety Officer
State of New Jersey
Commonwealth of Pennsylvania

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SISP Review Complete: John D. Kinneman

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