U.S. NUCLEAR REGULATORY COMMISSION
REGION I

INSPECTION REPORT

Inspection No.	03037119/2009001
Docket No.	03037119
License No.	06-31122-01
EA No.	EA-10-062
Licensee:	Earth Engineers, Inc dba Heynen Engineers
Location:	380 Maple Avenue Chershire, Connecticut 06410
Inspection Dates:	October 7, December 4, and January 28, 2010 Telephone exit April 13, 2010

Inspectors:

/RA/ ***05/12/10***

Craig Gordon date
Senior Health Physicist
Materials Security and Industrial Branch
Division of Nuclear Materials Safety

/RA/ ***05/12/10***

Scott Wilson date
Health Physicist
Materials Security and Industrial Branch
Division of Nuclear Materials Safety

Approved By:

/RA/ ***05/12/10***

Marie Miller, Chief date
Materials Security and Industrial Branch
Division of Nuclear Materials Safety

Document Name: C:\FileNET\ML101330322.doc

EXECUTIVE SUMMARY

Earth Engineers, Inc. (dba Heynen Engineers)
NRC Inspection Report No. 03037119/2009001

Earth Engineers, Inc. (EEI) possessed one portable gauge containing cesium-137 and americium-241 in sealed sources. On June 4, 2009, the NRC issued an Order Revoking License (Order) to the licensee revoking the license for non-payment of the annual license fee (ML091560158). The Order required, in part that the license divest itself of all licensed material within 60 days, or pay the annual license fee within 30 days. No annual fee had been paid, so on October 2, 2009, an inspector conducted a reactive inspection, to verify the location and security of the portable gauge. The inspector was unable to examine the gauge, because the combination to the locked storage cabinet was maintained by the Radiation Safety Officer, who had left the company in January 2008. The NRC inspector discussed the requirements of the Order with an EEI Authorized User and indicated that the fee needed to be paid or the gauge properly disposed or transferred to an authorized recipient. From November 9, 2009, until January 27, 2010, NRC attempted to contact EEI by telephone, mail, and by an unsuccessful onsite visit on December 4, 2009, to verify the security controls for the portable nuclear gauge, and to review your actions required by the Order. On January 28, 2010, the NRC inspector conducted an inspection at the licensee's facility and was able to determine that the gauge was properly stored and secured.

The inspector identified three apparent violations of NRC regulatory requirements that involved the failure to: (1) afford to the Commission at all reasonable times opportunity to inspect materials, activities, facilities and records under applicable regulations as required by 10 CFR 19.14(a); (2) pay the annual fee to the NRC within 30 days, or dispose or transfer the portable nuclear gauge within 60 days from the date of the Order; and (3) have a Radiation Safety Officer as required by NRC License No. 06-31122-01.

In February 2010, the licensee completed transfer of the gauge to an authorized recipient, paid its past due annual fee to the US Treasury, and on March 11, 2010, requested termination of its NRC license.

REPORT DETAILS

I. Organization and Scope of the Program

a. Inspection Scope

The inspector reviewed the organization and scope of the licensee's program, reviewed records, and held discussions with the licensee personnel.

b. Observations and Findings

Earth Engineers, Inc., dba Heynen Engineers, is a small privately owned company, authorized for use and storage of a moisture density gauge that contained cesium-137 and americium-241, at its facility located 380 Maple Avenue, Cheshire, Connecticut, under License No. 06-31122-01. The site was the residence of the company president, Peter Heynen, who was responsible for company oversight, but not directly involved in radiation safety activities. In November 2008, the EEI President retired from the company, leaving the operation to his daughter, an Authorized Gauge user.

The radiation safety program had been maintained by the Radiation Safety Officer (RSO). After the initial license was issued in 2006, EEI had limited gauge use, particularly after 2008. The initial inspection performed in 2006 did not identify any concerns or violations. From discussions with EEI personnel, it was found that the RSO named on the license, Brian Ennis, had left the company in January 2008. EEI did not replace the RSO, nor did EEI notify the NRC that the RSO was no longer employed by EEI. Follow up discussions with EEI staff indicated the company had experienced financial hardship, and did not expect to continue use of the licensed gauge. The licensee was able to transfer the gauge in February 2010 and has requested termination of the NRC license.

c. Conclusions

An apparent violation of Condition 12 of License No. 06-31122-01 was identified by the NRC inspector for failure to have an RSO, when the listed RSO left EEI in January 2008.

II. Material Receipt, Use, Transfer, and Control

a. Inspection Scope

The inspector reviewed the material receipt, use, transfer, and control of the licensee's program, reviewed records, and held discussions with the licensee personnel. The inspector also discussed the terms of an NRC Order for failure to pay its NRC debts.

b. Observations and Findings

The NRC issued to Earth Engineers, Inc. (EEI) an Order Revoking License (Order), on June 4, 2009, for failure to pay required NRC fees. The Order included a condition for a 30-day period from date of the Order, allowing the licensee to pay all debts due to the NRC prior to license revocation. The Order also included conditions for a 60-day period from date of the Order for disposal or transfer of any licensed material possessed under the license to an authorized recipient, followed by a 5-day period for NRC notification after the material was disposed. The licensee did not pay its annual fee within the required 30-day deadline for debt payment.

On October 7, 2009, NRC conducted a reactive inspection of the EEI Cheshire, Connecticut site, because the licensee had not complied with the Order. The Authorized User (AU) showed the inspector the location where she believed the portable nuclear density gauge was being maintained, inside a secured storage cabinet on the property. The inspector was unable to examine the gauge because the combination to the cabinet lock was maintained by the RSO, who had left the company. A radiation survey of the cabinet (Eberline Model E-120, cal. exp. 9/2010) indicated readings up to 4 milliRem per hour (4 mR/hr) on contact with the outside of the cabinet, indicative of radiation exposure from a portable nuclear gauge. The inspector explained the terms of the Order to the AU, who indicated she would attempt to resolve this matter by paying the past due debts. In follow up calls on October 14 and November 2, 2009, the AU indicated that the lock combination was obtained, and she was able to gain access to the gauge. The AU maintained the gauge in secured storage while seeking advice on how to transfer it.

After that date, however, NRC was unable to contact EEI despite additional phone calls to the AU and another site visit on December 4, 2009. On December 10, 2009, NRC sent EEI a letter (certified mail, return receipt requested, and by regular mail) to request a response to the Order, but no response was received. During this period, the Connecticut DEP contacted NRC for information on EEI because EEI had failed to pay State registration fees, and DEP also could not contact EEI.

The inspector was able to contact the company President on January 27, 2010 to arrange an NRC inspection beginning the next day. The inspector verified the portable nuclear gauge was at the location listed on the license and locked in the storage cabinet. The gauge was adequately secured and found in very good condition. A leak test performed on February 8, 2010, was negative for removable contamination. On February 15, 2010, the President, EEI notified the NRC that the gauge was transferred to QC Resource Technical Services, Newtown, Connecticut, an authorized recipient. On

March 11, 2010, EEI submitted NRC Form 314, "Certificate of Disposition of Materials," indicating the gauge had been transferred to QC Resource Technical Service, and requested termination of the NRC license. Based upon review of correspondence from EEI and discussions with the President, NRC determined that license termination requirements have been satisfied, however, the license cannot be terminated until a final enforcement decision has issued to EEI.

c. Conclusions

The inspector identified two apparent violations. One apparent violation involved the failure to afford to the Commission at all reasonable times opportunity to inspect materials, activities and records under the regulations as required by 10 CFR 19.14(a). Specifically, on October 7, 2009, EEI did not provide access to the nuclear portable gauge to inspect the condition of the gauge, and between November 9, 2009, and January 27, 2010, NRC inspectors made several attempts to contact the licensee by telephone, mail, and personal visits to the facilities to schedule an inspection of licensed activities, but the licensee failed to respond to the NRC requests. The second apparent violation was a violation of the Order regarding EEI's failure to pay the past due annual fee or dispose or transfer one portable nuclear gauge to an authorized recipient.

III. Exit Meeting

On April 13, 2010, a telephone exit meeting was held with the President, EEI to discuss the results of the inspection. Three apparent violations were identified. The President acknowledged the findings, stating that no further NRC licensed activities were planned, the gauge had been transferred, and that license termination was expected.

PARTIAL LIST OF PERSONS CONTACTED

Licensee

P. Heynen, President
H. Heynen, authorized user
B. Ennis, former RSO