

June 28, 2010

EA-10-062

Peter M. Heynen, P.E.
President
Earth Engineers, LLC
dba Heynen Engineers
380 Maple Avenue
Cheshire, CT 06410

SUBJECT: NOTICE OF VIOLATION AND LICENSE TERMINATION – NRC INSPECTION
REPORT NO. 03037119/2009001 AND NRC OFFICE OF INVESTIGATIONS
REPORT NO. 1-2010-015

Dear Mr. Heynen:

This letter refers to an NRC reactive inspection conducted between October 7, 2009 and January 28, 2010, as well as a subsequent investigation by the NRC Office of Investigations (OI), at the Earth Engineers, Inc. (EEI), d.b.a. Heynen Engineers, facility located in Cheshire, Connecticut. The NRC conducted the on-site inspection on October 7 and December 4, 2009, after the NRC issued an Order to EEI for nonpayment of licensee fees. The Order required payment of fees within 30 days of the date of the Order, or transfer of the licensed material, consisting of a portable gauge, to an authorized recipient within 60 days of the date of the Order (reference: NRC Order Revoking License, issued on June 4, 2009 (ML091560158)).

During the initial on-site inspection, EEI did not provide the NRC access to the portable gauge in storage. Subsequently, despite multiple outreaches and another site visit, EEI did not meet or contact the NRC. As a result, the OI investigation was initiated to: (1) determine whether EEI deliberately failed to comply with the NRC Order, as well as NRC portable gauge storage requirements; and, (2) assist in locating the portable gauge in order to verify the adequacy of its security. The NRC was able to contact EEI on January 27, 2010 and arranged an inspection. After the conclusion of the inspection and investigation, the findings were discussed with you on April 13, 2010, during an exit meeting.

Based on the information developed during the inspection and the investigation, the NRC has determined that three violations of NRC requirements occurred, although OI did not substantiate that any of the violations involved wrongdoing. The violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in Inspection Report No. 03037119/2009001, issued on May 12, 2010 (ML101330254). The violations involve the failures to: (1) pay licensee fees within 30 days of the date of the aforementioned Order, or transfer the licensed material to an authorized recipient within 60 days of the date of the aforementioned Order; (2) between November 2, 2009 through January 25, 2010, afford the NRC an opportunity to inspect the EEI facility; and, (3) have a Radiation Safety Officer (RSO) approved by the NRC after the individual named on the license as RSO left EEI in January 2008.

With respect to the two most significant violations, involving the failures to comply with the NRC Order and to afford the NRC an opportunity to inspect the EEI facility, the NRC considered that although EEI was not using the portable gauge and it was securely in storage during the times the NRC was unable to inspect the EEI facility, the storage location (garage of the residence) was left vacant for long periods of time. This created a potential for the portable gauge to be stolen or tampered with, which could have resulted in the unnecessary exposure of members of the public to radiation. In addition, the NRC expended significant resources to locate EEI and ensure the security of the portable gauge after EEI did not afford the NRC an opportunity to inspect the facility. Considering that these violations share a common root cause of EEI not having an RSO to implement the radiation safety program, after the former RSO departed EEI in 2008, the NRC has categorized these violations collectively, in accordance with the NRC Enforcement Policy, as a Severity Level (SL) III problem, as cited in Section I of the Notice.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$3,500 is considered for a SL III problem. Because your facility has not been the subject of escalated enforcement action within the last two years or two inspections, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. EEI's corrective actions, completed by March 2010, include the following: (1) transferring the gauge to an authorized recipient and performing a leak test on the portable gauge, which did not find any removable contamination present on the gauge; (2) paying required fees to the US Treasury; and, (3) requesting termination of the license. Therefore, in recognition of the absence of previous escalated enforcement action, and in consideration of the fact that your license is being terminated, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case.

The third violation, involving the failure to have an RSO approved by the NRC after the individual named on the license as RSO left EEI in January 2008, has been categorized as SL IV, and is cited in the enclosed Notice in Section II.

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken to correct the violations and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 03037119/2009001 and in this letter. In addition, as mentioned above, your license is being terminated. Therefore, no response to this letter or the enclosed Notice is required. However, if the description in this letter does not accurately reflect your corrective actions or your position, or if you choose to respond, you should follow the instructions specified herein. Further, if you seek to obtain an NRC license in the future, a response to this Notice may be required prior to NRC issuance of another license.

In accordance with the NRC Order, satisfaction of the requirements of 10 CFR 30.36, and your license termination request dated March 11, 2010, an amendment to your license is attached that terminates License No. 06-31122-01. All facilities previously used for licensed activities may be released for unrestricted use.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosures 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-adams.html>. To the extent possible, your response, if you choose to provide one, should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such information, you must specifically identify the portions of your response that you seek to have withheld, and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

Sincerely,

/RA/ Original Signed by Marc L. Dapas for

Samuel J. Collins
Regional Administrator

Docket No. 03037119
License No. 06-31122-01

Enclosures:

1. Notice of Violation
2. Amendment No. 01 Terminating License No. 06-31122-01

cc:
State of Connecticut

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Docket No. 03037119
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2. Amendment No. 01 Terminating License No. 06-31122-01

cc:

State of Connecticut

Distribution: see next page

SUNSI Review Complete: AEP (Reviewer's Initials)

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NOTICE OF VIOLATION

Earth Engineering, Inc. (EEI)
Cheshire, Connecticut

Docket No. 03037119
License No: 06-31122-01
EA-10-062

During an NRC reactive inspection conducted between October 7, 2009 and January 28, 2010, as well as an NRC Office of Investigations investigation completed on March 26, 2010, for which an exit meeting was held on April 13, 2010, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

I. VIOLATIONS SUBJECT TO ESCALATED ENFORCEMENT ACTION

- A. The NRC "Order Revoking License," dated June 4, 2009, required payment of licensee fees within 30 days of the date of the Order, or transfer to an authorized recipient of licensed nuclear material acquired or possessed under the authority of License No. 06-31122-01, and that the licensee take all actions required by 10 CFR 30.36. Such disposal must take place within 60 days from the date of the Order.

Contrary to the above, the licensee did not pay fees by July 4, 2009 (30 days from the date of the Order), or transfer to an authorized recipient licensed nuclear material acquired or possessed under the authority of License No. 06-31122-01 by August 3, 2009 (60 days from the date of the Order).

- B. 10 CFR 19.14(a) requires, in part, that each licensee afford to the Commission at all reasonable times opportunity to inspect materials, activities and records under the regulations.

Contrary to the above, the licensee did not afford to the Commission at all reasonable times opportunity to inspect materials, activities and records under the regulations. Specifically, on October 7, 2009, the licensee did not provide access to the nuclear portable gauge to inspect the condition of the gauge; and, between November 2, 2009 and January 27, 2010, the licensee did not provide access to the EEI facility for the NRC to perform an inspection even though an NRC inspector made several attempts to contact the licensee by telephone, mail, and a personal visit to the facility to schedule an inspection of licensed activities.

These violations are collectively categorized as a Severity Level III problem. (Supplement VI).

II. VIOLATION NOT SUBJECT TO ESCALATED ENFORCEMENT ACTION

Condition 12 of License No. 06-31122-01 specifies a particular individual as the Radiation Safety Officer (RSO).

Contrary to the above, the RSO named in Condition 12 of License No. 06-31122-01 left in January 2008, and the licensee failed to have an RSO approved by the NRC.

This is a Severity Level IV violation (Supplement VI).

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken to correct the violations and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 03037119/2009001 and in the letter transmitting this Notice of Violation (Notice). In addition, the letter transmitting this Notice encloses Amendment No. 01 Terminating License No. 06-31122-01 of EEI. Therefore, no response to this Notice is required. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation, "EA-10-062," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator, Region I, 475 Allendale Rd., King of Prussia, PA 19406, within 30 days of the date of the letter transmitting this Notice.

If you choose to respond, your response 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>. Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Dated this 28th day of June 2010