



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

August 1, 2011

Docket No. 03036569  
EA-11-098

License No. 52-30913-01

Jaime Sánchez  
President  
S&R Engineering S.E.  
P.O. Box 29406  
65<sup>th</sup> Infantry Station  
San Juan, PR 00929

**SUBJECT: NRC INSPECTION REPORT NO. 03036569/2009002, S&R ENGINEERING S.E., SAN JUAN, PUERTO RICO, AND NRC OFFICE OF INVESTIGATIONS REPORT NOS. 1-2010-022 & 1-2010-052**

Dear Mr. Sánchez:

S&R Engineering S.E. (S&R) was issued an NRC Order Revoking License on October 29, 2009, related to S&R's failure to pay the NRC licensing fees. The Order restricted S&R's activities involving licensed nuclear material to decommissioning and safe, secure storage, and also revoked S&R's license unless S&R paid the required fees within 30 days of the date of the Order. The Order indicated that if S&R failed to pay the fees within the required 30 days, S&R was required to dispose of or transfer the licensed nuclear material to an authorized recipient within 60 days of the date of revocation of the license, and to notify the NRC in writing after disposal or transfer of the material.

During the period of December 15, 2009, through July 13, 2011, Craig Gordon of this office conducted a safety inspection of S&R at its San Juan, Puerto Rico location. The inspection was conducted to review S&R's compliance with the Order and to verify the location and security of a portable moisture density gauge containing licensed nuclear material. The inspection consisted of observations by the inspector, interviews with S&R personnel, and a selective examination of representative records. The preliminary findings of the inspection were discussed with you during a telephone call on August 3, 2010, and in-person with Mr. Hector Galarza, S&R's Radiation Safety Officer (RSO) on October 3, 2010. We have been unable to contact either you or Mr. Galarza since those discussions took place to provide the final inspection results. In addition, as of the date of this letter, S&R has not paid the fee, and has not transferred or disposed of the gauge, as required by the Order.

Since the gauge has remained in your possession, the NRC Office of Investigations (OI), Region I Field Office, initiated an investigation on March 4, 2010 (Report No. 1-2010-022), to determine if S&R was deliberately continuing to use the portable gauge in violation of the Order.

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

On April 12, 2010, NRC inspected S&R's San Juan location and identified that S&R had not transferred or disposed of the gauge. During interviews, S&R staff (including yourself and the S&R RSO) indicated to the NRC that they understood the gauge could not be used, but did not provide a commitment or specific plan for its disposition. Based on the results of that investigation, the NRC concluded that S&R had not deliberately violated the portion of the NRC Order prohibiting the use of the portable gauge.

The NRC OI initiated a second investigation on August 18, 2010 (Report No. 1-2010-052), to determine whether you, as the S&R president, willfully provided to the NRC inaccurate information regarding the whereabouts of S&R's portable moisture density gauge during the telephone conversation on August 3, 2010 with Mr. Gordon and Marie Miller, Chief, Materials Security and Industrial Branch. During that conversation, you informed the NRC that S&R had transferred the gauge to an authorized recipient (another NRC licensee) over a month prior to that conversation and that you had the paperwork to document the transfer. However, when the NRC contacted the purported recipient of the gauge, that company informed the NRC that it had not received the gauge. The company explained that it could not do so without requesting that its NRC license be amended to increase the amount of radioactive material it could possess to accommodate the additional gauge. On October 3, 2010, Mr. Gordon inspected S&R's San Juan offices, and identified that S&R, in fact, still possessed the gauge and was storing it without meeting NRC portable gauge security requirements. Neither you nor any other S&R representative have responded to the NRC's subsequent communication attempts or requests for information about the status of the gauge. The results of this OI Investigation are included in the enclosed Factual Summary of OI Report No. 1-2010-052 (Enclosure 2).

Based on the NRC inspection and investigation, the NRC identified the following four apparent violations of NRC requirements by S&R: (1) failing to comply with or respond to an NRC Order as required by 10 CFR 2.202(b) regarding either payment of the licensing fee or properly disposing of or transferring the gauge; (2) failing to use a minimum of two independent controls that form tangible barriers to secure S&R's portable gauge from unauthorized removal, when the portable gauge was not under S&R's direct control and constant surveillance as required by 10 CFR 30.34(i); (3) providing information to the NRC that is not complete and accurate in all material respects as required by Title 10 of the Code of Federal Regulations (10 CFR) 30.9(a); and (4) failing to afford the NRC the opportunity to inspect materials, activities, and records under the regulations as required by 10 CFR 19.14(a), despite numerous NRC contacts. The details and the circumstances surrounding these apparent violations are described in the enclosed Inspection Report No. 03036569/2009002 (Enclosure 1).

All of the apparent violations will be considered for escalated enforcement action in accordance with the NRC Enforcement Policy. You should be aware that, in accordance with Section 2.3.4 of the Enforcement Policy, the NRC may impose a civil penalty for these violations, including consideration of penalties for each day the violation continues. Additionally, the NRC would issue a press release announcing any civil penalty. The current NRC Enforcement Policy is included on the NRC's Website at [www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html](http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html). Because the NRC has not made a final determination in this matter, a Notice of Violation is not being issued at this time. In addition, please be advised that the number and characterization of apparent violations described herein may change as a result of further NRC review.

The NRC's primary interest in this matter is to ensure that the gauge is immediately and appropriately disposed of or transferred to an authorized recipient since you have not paid your fees and, therefore, are no longer authorized to use or possess the gauge. Before the NRC makes its enforcement decision, we strongly encourage S&R to disposition the gauge in accordance with the requirements of the October 29, 2009 Order within **10** days of the date of this letter, and to contact the NRC as described below. If S&R is unable to disposition the gauge within that timeframe, the NRC would like to discuss the status of the gauge, S&R's plan for dispositioning the gauge, and the apparent violations with S&R at a pre-decisional enforcement conference (PEC) at the NRC Region I office.

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. This conference is being held to obtain information to assist the NRC in making an enforcement decision. This may include information to determine whether violations occurred, information to determine the significance of the violations, information related to the identification of the violations, and information related to any corrective actions taken or planned. The conference will provide an opportunity for S&R to provide its perspective on these matters and any other information that S&R believes the NRC should take into consideration in making an enforcement decision. In presenting its corrective actions, S&R should be aware that the promptness and comprehensiveness of its 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," (Enclosure 3) may be helpful.

Instead of a PEC, if S&R does not appropriately dispose of or transfer the gauge within the requested timeframe, S&R may request Alternative Dispute Resolution (ADR) with the NRC. 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 is mediation. In mediation, a neutral mediator with no decision-making authority helps parties clarify issues, explore settlement options, and evaluate how best to advance their respective interests. The mediator's responsibility is to assist the parties in reaching an agreement. However, the mediator has no authority to impose a resolution upon the parties. Mediation is a confidential and voluntary process. If the parties (the NRC and S&R) agree to use ADR, they select a mutually agreeable neutral mediator and share equally the cost of the mediator's services. Additional information concerning the NRC's ADR process is provided in the enclosure brochure, NUREG/BR-0317 (Enclosure 4), and can be obtained at [www.nrc.gov/about-nrc/regulatory/enforcement/adr.html](http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html).

The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as an intake neutral. Intake neutrals perform several functions, including: assisting the parties in determining ADR potential for their case, advising parties regarding the ADR process, aiding the parties in selecting an appropriate mediator, explaining the extent of confidentiality, and providing other logistic assistance as necessary. Please contact ICR at Cornell University at (877) 733-9415 within **10** days of the date of this letter if S&R is interested in pursuing resolution of these issues through ADR.

If S&R does not disposition the gauge within the requested timeframe, regardless of whether S&R chooses a PEC or ADR, please be prepared to discuss S&R's plans for dispositioning the gauge as well as the corrective actions S&R has taken and plans to take to prevent recurrence of these violations (such as requesting termination of your NRC license and committing to not

be involved in NRC licensed activities for a period of time). Either the PEC or the ADR would be closed to public observation in accordance with the NRC's Enforcement Policy because the NRC's preliminary findings are based on an NRC OI Report that has not been publicly disclosed. However, the time and date of the PEC or ADR will be publicly announced.

Please contact Blake Welling at (610) 337-5205 within **10** days of the date of this letter to notify the NRC of whether S&R has dispositioned the gauge or decided to either participate in a PEC or pursue ADR. The PEC or the ADR session should be held within 30 days of the date of this letter. If S&R does not contact us regarding its participation in either a PEC or ADR within the time period specified, and an extension of time has not been granted by the NRC, we will make an enforcement decision based on available information.

No written response regarding the apparent violations is required at this time. You will be advised by separate correspondence of the results of our deliberations on this matter. In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter will be 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>.

Sincerely,

*/RA/*

Raymond K. Lorson, Director  
Division of Nuclear Materials Safety

Enclosures:

1. Inspection Report No. 03036569/2009002
2. Factual Summary of OI Investigation Report No. 1-2010-052
3. Excerpt from NRC Information Notice 96-28
4. Brochure NUREG/BR-0317

cc:

Commonwealth of Puerto Rico

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 Raymond K. Lorson, Director  
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