



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I**
2100 RENAISSANCE BOULEVARD, SUITE 100
KING OF PRUSSIA, PENNSYLVANIA 19406-2713

August 16, 2013

EA-13-105

RI License No. 3L-050-01

George J. Geisser III, P.E., President
Geisser Engineering Corporation
227 Wampanoag Trail
Riverside, RI 02915-2211

**SUBJECT: NRC INSPECTION REPORT NO. 150-00038/2012-001 AND INVESTIGATION
REPORT NO. 1-2012-053**

Dear Mr. Geisser:

This letter refers to a U.S. Nuclear Regulatory Commission (NRC) safety inspection, conducted on May 9, 2012, at Geisser Engineering Corporation's (GEC) facilities located in Riverside, Rhode Island, with continued in-office review through August 15, 2013. The inspection was an examination of activities conducted under the general license pursuant to 10 CFR 150.20 as it relates to safety and security, compliance with the Commission's rules and regulations, and with the conditions of the GEC State of Rhode Island Radioactive Materials License RI-3L-050-01.

During the inspection, an apparent violation of NRC requirements was identified involving GEC's failure to file for reciprocity prior to conducting work in NRC jurisdiction, as required by 10 CFR 150.20. The details and the circumstances surrounding this apparent violation are described herein and in the enclosed Inspection Report No. 150-00038/2012-001 (Enclosure 1).

In addition to the inspection, an investigation was conducted by the NRC Office of Investigations (OI) to determine whether you, as the President/Owner of GEC, deliberately engaged in the use of licensed material in areas of NRC jurisdiction without having an NRC license or a reciprocity agreement. Based on the evidence gathered during the investigation, which was completed on April 26, 2013, the NRC concluded that you acted deliberately. The results of this OI Investigation are included in the enclosed Factual Summary of OI Investigation Report No. 1-2012-053 (Enclosure 2).

Based on the results of the inspection and investigation, the NRC found that the apparent violation occurred on multiple occasions between October 21, 2009, and June 23, 2011. Specifically, GEC used portable gauges on 22 occasions in the State of Connecticut and at Naval Station Newport in Newport, Rhode Island without filing for reciprocity with the NRC. This apparent violation is being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html. The circumstances surrounding this apparent violation, the significance of the issue, and the need for lasting and effective corrective actions were discussed with you telephonically by Mr. Blake Welling, Chief,

Materials Security and Industrial Branch, and Mr. Shawn Seeley, Health Physicist, during an exit meeting conducted on August 15, 2013.

Before the NRC makes its enforcement decision, we are providing GEC with an opportunity to: (1) request a Predecisional Enforcement Conference (PEC) or (2) request Alternative Dispute Resolution (ADR). If GEC decides to participate in a PEC or pursue an ADR, please contact Mr. Blake Welling, Chief, Materials Security and Industrial Branch, at 610-337-5205 within **10** days of the date of this letter. A PEC should be held within 30 days of the date of this letter and an ADR session should be held within 45 days of the date of this letter.

If GEC chooses to request a PEC, the conference will afford GEC the opportunity to provide its perspective on the apparent violation and any other information that GEC believes the NRC should take into consideration before making an enforcement decision. The decision to hold a PEC does not mean that the NRC has determined that a violation has occurred or that enforcement action will be taken. The topics discussed during the conference may include the following: information to determine whether a violation occurred, information to determine the significance of a violation, information related to the identification of a violation, and information related to any corrective actions taken or planned to be taken. The guidance in the enclosed NRC Information Notice 96-28, "Suggested Guidance Related to Development and Implementation of Corrective Actions," (Enclosure 3) may be helpful. If a PEC is held, the NRC will issue a press release to announce the time and date of the conference; however, the PEC will be closed to public observation since information related to an Office of Investigations report will be discussed and the report has not been made public.

In lieu of a PEC, GEC may also request ADR with the NRC in an attempt to resolve this issue. ADR is a general term encompassing various techniques for resolving conflicts using a neutral third party. The technique that the NRC has decided to employ is mediation. Mediation is a voluntary, informal process in which a trained neutral (the "mediator") works with parties to help them reach resolution. If the parties agree to use ADR, they select a mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions. Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues. Additional information concerning the NRC's program can be obtained at <http://www.nrc.gov/about-nrc/alt-dispute-resolution.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as a neutral third party. Please contact ICR at 877-733-9415 within **10** days of the date of this letter if GEC is interested in pursuing resolution of this issue through ADR.

Since the NRC has not made a final decision in this matter, no violation is being issued at this time. In addition, please be advised that the number and characterization of apparent violations described in the enclosed inspection report may change as a result of further NRC review. GEC 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, its enclosures, and the response, if GEC chooses to provide one, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. 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.

Current NRC regulations and guidance are included on the NRC's website at www.nrc.gov; select **Nuclear Materials; Med, Ind, & Academic Uses**; then **Regulations, Guidance and Communications**. The current Enforcement Policy is included on the NRC's website at www.nrc.gov; select **About NRC, Organizations & Functions; Office of Enforcement; Enforcement documents**; then **Enforcement Policy (Under 'Related Information')**. GEC may also obtain these documents by contacting the Government Printing Office (GPO) toll-free at 1-866-512-1800. The GPO is open from 8:00 a.m. to 5:30 p.m. EST, Monday through Friday (except Federal holidays).

The NRC's Safety Culture Policy Statement became effective in June 2011. While a policy statement and not a regulation, it sets forth the agency's *expectations* for individuals and organizations to establish and maintain a positive safety culture. You can access the policy statement and supporting material that may benefit your organization on NRC's safety culture Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/safety-culture.html>. We strongly encourage you to review this material and adapt it to your particular needs in order to develop and maintain a positive safety culture as you engage in NRC-regulated activities.

If you have any questions related to this matter, please contact Mr. Welling of my staff at 610-337-5205.

Sincerely,

/RA/

James W. Clifford, Director
Division of Nuclear Materials Safety

Enclosures:

1. NRC Inspection Report 150-00038/2012-001
2. Factual Summary of OI Investigation Report No. 1-2012-053
3. Excerpt from NRC Information Notice 96-28

cc w/Enclosures 1 and 2:
Raymond Rusin, Director
Rhode Island Department of Health-Radiation Control

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cc w/Enclosures 1 and 2:
Raymond Rusin, Director
Rhode Island Department of Health-Radiation Control

Distribution w/encl: (via email):

OEMail
RZimmerman, OE
NHilton, OE
NHasan, OE
LSreenivas, OE
MBurgess, FSME
RSun, FSME
EMonteith, OGC
JTeator, RI
DHolody, RI
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DOC NAME: G:\WordDocs\Current\Insp Letter\GeisserEngineerLicenseeletter sws 7 11 13 .docx
ADAMS ACCESSION NUMBER:ML13228A286

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OFFICE	DNMS/RI	DNMS/RI	DNMS/RI	ORA/RC	OI/RI	ORA/RI
NAME	SSeeley/sws	BWelling/bdw	JClifford/jaj f/	JFarrington/jf	JTeator/jf for	DHolody/djh
DATE	07/22/13	07/25/13	07/26/13	07/29/13	07/29/13	07/30/13
OFFICE	OE/HQ	FSME	OGC	DNMS/RI		
NAME	TMarenchin/via email	RSun/via eml	EMonteith/via eml	JClifford/jwc		
DATE	08/13/13	08/08/13	08/09/13	08/16/13		

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EXECUTIVE SUMMARY

Geisser Engineering Corporation
NRC Inspection Report No. 15000038/2012001

Geisser Engineering Corporation (GEC) is an engineering consulting company, which provides engineering services in Rhode Island, Connecticut and Massachusetts. GEC holds an Agreement State license authorizing the possession and use of portable moisture/density gauges containing sealed sources of radioactive material in the State of Rhode Island.

The NRC conducted an unannounced reciprocity inspection at GEC's offices in Riverside, Rhode Island, and continued in-office, to review GEC's radiation protection program for conducting licensed activities within NRC jurisdiction. The NRC determined that GEC had performed licensed activities in NRC jurisdiction on 22 occasions from October 21, 2009, to June 23, 2011, without filing NRC Form 241, "Report of Proposed Activities in Non-Agreement States" as required by 10 CFR Part 150.20(b)(1).

Concurrent with the inspection, the NRC Office of Investigations (OI) opened an investigation to determine whether GEC engaged in deliberate misconduct for the failure to file NRC Form 241. The OI investigation concluded the president deliberately engaged in the use of licensed material without having an NRC license or filing for reciprocity. (For a synopsis of the OI Investigation, see Enclosure 2 to the cover letter transmitting this Inspection Report.)

Based on the results of the inspection, an apparent violation of NRC requirements was identified for the failure to file NRC Form 241, "Report of Proposed Activities in Non-Agreement States," as required by 10 CFR Part 150.20(b)(1).

REPORT DETAILS

I. Organization and Scope of the Program

a. Inspection Scope

The inspector reviewed the organization and scope of the licensee's portable gauge program. Information was gathered through direct inspection, review of records, and interviews with cognizant individuals.

b. Observations and Findings

GEC is an engineering consulting company, with over 50 employees located in Riverside, Rhode Island that provides engineering services to companies in Rhode Island, Connecticut, and Massachusetts. The GEC license authorized the possession and use of portable gauges, containing sealed sources of radioactive material, for the purpose of measuring moisture and density within the State. George Geisser, III, is the president of GEC. The Radiation Safety Officer (RSO) listed on the Rhode Island license had left the company in 2011 and was not replaced. At the time of the inspection, GEC was in the process of appointing a new RSO.

The inspector noted that GEC held NRC license No. 44-28180-01 from August 1993 to August 2003 and NRC License No. 44-28180-02 from January 2004 to May 2008, authorizing operations and gauge use in Vermont concurrently with their Rhode Island license. The Vermont portion of the business was sold to Vermont Testing and Consulting Corporation in May 2008.

c. Conclusions

No violations of NRC requirements were identified.

II. Management Oversight and Reciprocity Activities of the Program

a. Inspection Scope

The inspector reviewed the management oversight of licensed activities, the implementation of the radiation safety program, and GEC's use of portable gauges under reciprocity in areas of NRC jurisdiction. Information was gathered through a review of records and interviews with the acting RSO and the company president.

b. Observations and Findings

Based upon a review of the utilization records showing the locations of gauge use, the inspector noted that GEC had worked in NRC jurisdiction without filing for reciprocity with the NRC as required. The dates and locations of work in NRC jurisdiction are listed in the table below:

Year	Location	Dates
2009	Naval Station Newport/ Newport, RI	October 21, 29; November 2, 3; December 1, 2, 15, 19
2010	Naval Station Newport/ Newport, RI Stonington, CT	April 15; May 7; August 19; October 13; July 20
2011	Naval Station Newport/ Newport, RI	January 5; April 14; May 9; June 9, 15, 18, 21, 22, 23

The inspector interviewed the acting RSO to determine whether GEC had submitted the required NRC Form 241 before conducting licensed activities in the locations and dates listed above. The acting RSO could not provide the required documentation. He stated that the company president had directed him to conduct those activities, and assumed the proper filings were made to the NRC. The inspector reviewed the Region I reciprocity database and confirmed that GEC had not applied for reciprocity.

Subsequently, the inspector interviewed the GEC president via telephone and asked him whether the required NRC forms for the dates listed above were submitted to the NRC. The GEC President indicated that he was not aware of the NRC reciprocity requirements nor did he have the time to maintain knowledge of, and compliance with, the reciprocity regulations. The inspector reviewed the NRC requirements for filing NRC Form 241 with the president during the interview.

As a result of the record reviews and interviews with licensee personnel, the inspector determined that an apparent violation of NRC requirements regarding GEC's failure to file reciprocity with the NRC for work performed in areas of NRC jurisdiction on 22 occasions from October 21, 2009, to June 23, 2011.

10 CFR 150.20(b)(1) requires, in part, that any person engaging in activities in non-Agreement States or areas of exclusive Federal jurisdiction within Agreement States, shall, at least 3 days before engaging in each such activity, file a submittal containing an NRC Form 241, "Report of Proposed Activities in Non-Agreement States," with the Regional Administrator of the appropriate NRC regional office.

Contrary to the above, from October 21, 2009, to June 23, 2011, GEC, a Rhode Island licensee, had engaged in licensed activities at temporary jobsites in NRC jurisdiction, involving the use and storage of portable nuclear gauges containing sealed sources, without either obtaining a specific license issued by the NRC or, at least 3 days before engaging in such activity, filing a submittal containing an NRC Form 241 and the appropriate fee with the NRC Region I office.

c. Conclusions

An apparent violation of NRC requirements was identified for the failure to file NRC Form 241, "Report of Proposed Activities in Non-Agreement States," as required by 10 CFR Part 150.20(b)(1).

III. Exit Meeting

On May 9, 2012, a preliminary exit meeting was conducted via telephone to discuss the scope of the inspection and the inspector's initial observations. On August 15, 2013, a final exit meeting was held by telephone to discuss the apparent violation and finding. GEC acknowledged the inspection results.

ATTACHMENT

SUPPLEMENTAL INFORMATION

PARTIAL LIST OF PERSONS CONTACTED

Licensee

Eric Zufelt, Acting RSO
George Geisser III, President

INSPECTION PROCEDURES USED

Inspection Guidance Used:

IMC 1220, "Processing of NRC Form 241 and Inspection of Agreement State Licensees
Operating Under 10 CFR 150.20"
IMC 2800, "Materials Inspection Program"
IP 87124, "Fixed and Portable Gauge Programs"

**Factual Summary of
Office of Investigations (OI)
Report 1-2012-053**

On June 20, 2012, the U. S. Nuclear Regulatory Commission's (NRC) OI, Region I (RI) Field Office initiated an investigation to determine whether the President/Owner of Geisser Engineering Corporation (GEC) deliberately engaged in the use of licensed material in NRC jurisdiction without having an NRC license or filing for reciprocity. OI completed the investigation and issued the subject report on April 26, 2013.

Based on the evidence gathered during this investigation, OI concluded that the President/Owner of GEC deliberately engaged in the use of licensed material in NRC jurisdiction without filing for reciprocity with the NRC.

Specifically, the investigation determined that:

1. The GEC President was aware of reciprocity requirements; the reciprocity rules and licensing requirements for federal jurisdiction had been explained to the President/Owner by the State of Rhode Island Department of Health inspectors; and he chose not to follow them over a protracted period of time. Specifically, GEC used portable gauges on multiple occasions, between October 21, 2009, and June 23, 2011, in the State of Connecticut and at the Naval Station Newport in Newport, Rhode Island (NRC jurisdiction) without filing for reciprocity;
2. GEC never applied to the NRC for reciprocity, even though the GEC President had been notified of the requirements by various agencies.
3. The GEC President made a business decision to operate outside of the rules and his state license. This is evidenced by his defiance of a cease and desist Order imposed by the Commonwealth of Massachusetts by continuing to work in that state and his failure to appear for an enforcement conference with the Rhode Island Department of Health for multiple violations of Rhode Island requirements.