



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION I
2100 RENAISSANCE BLVD., SUITE 100
KING OF PRUSSIA, PA 19406-2713

March 20, 2014

EA-13-105

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

**SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY –
\$11,200, NRC INSPECTION REPORT NO. 15000038/2012001 AND
INVESTIGATION REPORT NO. 1-2012-053**

Dear Mr. Geisser:

This letter refers to the U.S. Nuclear Regulatory Commission's (NRC) inspection conducted on May 9, 2012, at your facility in Riverside, Rhode Island, with continued in-office review through August 15, 2013, and an Office of Investigations (OI) investigation completed on April 26, 2013. On August 16, 2013, we issued Inspection Report 15000038/2012001 (ML13228A286), which documented one apparent violation of NRC requirements and indicated that we were considering escalated enforcement action for the apparent violation. The apparent violation involved Geisser Engineering Corporation (GEC)'s failure to file for reciprocity prior to conducting work in NRC jurisdiction, as required by Title 10 of the *Code of Federal Regulations* (CFR) 150.20. The purpose of the investigation was to determine whether, a senior official of GEC, deliberately engaged in the use of licensed material in areas of NRC jurisdiction without filing for reciprocity.

At your request, a predecisional enforcement conference (PEC) was held on November 20, 2013, in the NRC's Region I office to discuss the apparent violation, its significance, its root cause, and GEC's corrective actions. During the PEC, you acknowledged the apparent violation of 10 CFR 150.20 for failing to file for reciprocity on 22 occasions prior to undertaking work in the State of Connecticut and at the Newport Naval Station, Newport, Rhode Island. You indicated that GEC did not realize that the Newport Naval Station was an area of exclusive Federal jurisdiction within the Agreement State of Rhode Island. You also stated that GEC assumed that because the Newport Naval Station was physically located in Rhode Island, GEC's Rhode Island Agreement State license would cover its activities there. You did not provide any specific information as to why GEC did not file for reciprocity prior to performing NRC licensed activities in the Non-Agreement State of Connecticut. A summary of the PEC is enclosed. (Enclosure 1)

Based on the information developed during the inspection, the investigation, and the information that you provided during the PEC, the NRC has determined that a violation of NRC requirements occurred. The violation involved GEC's failure to file the required NRC Form 241, "Report of Proposed Activities in Non-Agreement States," a copy of its Agreement State specific

license, and the appropriate fee, with the Regional Administrator of the appropriate NRC regional office (in this case, the Region I office) on 22 occasions between October 21, 2009, and June 23, 2011, at least three days prior to using portable gauge devices containing byproduct material within the State of Connecticut, a Non-Agreement State, and at the Newport Naval Station, an area of exclusive Federal jurisdiction within the Agreement State of Rhode Island. GEC's failure to file for reciprocity interfered with the NRC's ability to inspect its activities while in NRC jurisdiction to ensure the adequate protection of public health and the safe use of radioactive materials.

For this reason, and because the NRC has determined that the actions of the senior official were willful, this violation has been categorized in accordance with the NRC Enforcement Policy as a Severity Level II violation. In accordance with the Enforcement Policy, a base civil penalty in the amount of \$5,600 is considered for a Severity Level II violation. The NRC considered whether credit was warranted for identification and corrective action in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy. With regards to identification, the NRC concluded that credit is not warranted because the violation was identified as a result of an NRC inspection and investigation. With regards to corrective actions, the NRC concluded that credit is not warranted because the corrective actions identified during the PEC, and included in the attached PEC summary, do not appear to be sufficient to ensure that further instances of the same nature would not occur in the future.

Therefore, to emphasize the importance of compliance with regulatory requirements and of prompt identification and comprehensive correction of violations, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in amount of \$11,200 (twice the base civil penalty) for this Severity Level II violation. Issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection efforts. In addition, any future violations involving the failure to file for reciprocity prior to conducting work in NRC jurisdiction will result in the consideration of increased enforcement action.

You are required to respond to the Notice of Violation and should follow the instructions specified in the enclosed Notice when preparing your response. Your response must include a discussion of your planned corrective actions for determining jurisdictional status and the need to file for reciprocity at least three days prior to conducting licensed activities in areas of exclusive Federal jurisdiction and in Non-Agreement States. If you have additional information that you believe the NRC should consider, you may provide it in your response to the Notice. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

Instead of providing a response to the Notice, you may request Alternative Dispute Resolution (ADR) with the NRC in an attempt to resolve this issue. This request must be made within 30 days of the issuance date of the Notice. 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. Additional information concerning the NRC's program is described in the enclosed brochure (NUREG/BR-0317) and can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution at Cornell University has agreed to facilitate NRC's program as an intake neutral. Please contact the Institute on Conflict Resolution at (877) 733-9415 if you are interested in pursuing resolution of this issue through the ADR program.

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 and in 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, your response 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/

William M. Dean
Regional Administrator

Enclosures:

1. Geisser Engineering Corporation Predecisional Enforcement Conference Summary
2. Notice of Violation and Proposed Imposition of Civil Penalty
3. NUREG/BR-0254, Payment Methods
4. NUREG/BR-0317, Post-Investigation ADR Program

cc w/enclosures:

Raymond Rusin, Director
Rhode Island Department of Health-Radiation Control

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 and in 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, your response 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

William M. Dean
Regional Administrator

Enclosures:

1. Geisser Engineering Corporation Predecisional Enforcement Conference Summary
2. Notice of Violation and Proposed Imposition of Civil Penalty
3. NUREG/BR-0254, Payment Methods
4. NUREG/BR-0317, Post-Investigation ADR Program

cc w/enclosures:

Raymond Rusin, Director
Rhode Island Department of Health-Radiation Control

Distribution: see next page

DOC NAME: S:\Enf-allg\Enforcement\Proposed-Actions\Region1\Geisser Engineering Corp. NOV-II EA-13-105rev1.docx
ADAMS Document Accession No: ML14079A503

X <i>SUNSI Review/</i>		X Non-Sensitive □ Sensitive			X Publicly Available □ Non-Publicly Available	
OFFICE	RI/ORA	RI/DNMS	RI/DNMS	RI/OI	RI/RC	RI/ ORA
NAME	C Crisden/CJC*	B Welling/BW*	J Clifford/JWC w/comment*/	J Teator/JAT*	B Klukan/BK with comment*	B Bickett/BB*
DATE	1/2/14	1/15/14	1/15/14 and 1/23/14	1/24/12	1/28/14	1/28/14
OFFICE	OE	FSME	OGC	RI/ ORA		
NAME	T Marenchin via email	M Burgess via email	E Moneith via email	W Dean		
DATE	3/11/14	3/10/14	3/10/14	03/20/14		

*See previous concurrence OFFICIAL RECORD COPY

Distribution:

ADAMS (PARS)

SECY

OEMAIL

OEWEB

M. Satorius, EDO

M. Weber, DEDMRT

J. Cassidy, OEDO

R. Zimmerman, OE

A. Campbell, OE

N. Hilton, OE

N. Hasan, OE

K. Beckford, OE

T. Marenchin, OE

B. Holian, FSME

L. Dudes, FSME

C. Einberg, FSME

P Henderson, FSME

M. Burgess, FSME

Enforcement Coordinators

RII, RIII, RIV (C. Evans, S. Orth, V. Campbell)

H. Bell, OIG

C. McCrary, OI

J. Teator, OI

C. Scott, OGC

E. Monteith, OGC

S Titherington-Buda, OCFO

W. Dean, RA

D. Lew, DRA

J. Clifford, DNMS, RI

D. Collins, DNMS, RI

B. Welling, DNMS, RI

S. Seeley, DNMS, RI

D. Janda, SAO-RI / M. Ford, SAO-RI

B. Klukan, RI

B. Bickett, RI

R. Urban, RI

M. McLaughlin, RI

C. Crisden, RI

D. Bearde, RI

S. Villar, RI

R1DNMSMailResource

Region I OE Files (with concurrences)

ENCLOSURE 1

PREDECISIONAL ENFORCEMENT CONFERENCE SUMMARY

George J. Geisser, III/Geisser Engineering Corporation

On November 20, 2013, Mr. George J. Geisser, III, President and Owner, Geisser Engineering Corporation (GEC), met with NRC management in the NRC Region I, King of Prussia, PA office. The meeting was held to discuss two apparent violations: 1) GEC's failure to file for reciprocity prior to conducting work in NRC jurisdiction, as required by 10 CFR 150.20; and 2) deliberate misconduct by Mr. Geisser as the President/Owner of GEC. Specifically, GEC failed to notify the Region I office prior to conducting licensed activities at the Newport Naval Station, an area of exclusive Federal jurisdiction within the Agreement State of Rhode Island, and in the State of Connecticut, a Non-Agreement State, on 22 occasions between October 21, 2009, and June 23, 2011. Additionally, based on the results of an investigation by the NRC Office of Investigations, the NRC determined that Mr. Geisser deliberately violated NRC requirements when he directed employees of GEC to engage in the use of licensed material in these areas of NRC jurisdiction, without having in place an NRC license or having filed for reciprocity at least three days prior to using portable gauge devices containing byproduct material.

Mr. James Clifford, Director, Division of Nuclear Materials Safety, provided opening remarks and described the purpose of the predecisional enforcement conference. Cherie Crisden, NRC Region I Enforcement Specialist, described the NRC Enforcement Policy and process. Blake Welling, Branch Chief, provided a summary for each apparent violation.

Mr. Geisser acknowledged the first apparent violation for the failure to provide the required notification to the Region I office prior to performing work as required by 10 CFR 150.20, indicating that he did not realize that the Newport Naval Station was in an area of exclusive NRC jurisdiction. He stated that he assumed that because it was located within the State of Rhode Island, his Rhode Island Agreement State license would cover the use of licensed material there. Mr. Geisser did not provide specific information as to why he did not file for reciprocity for GEC's use of licensed material in the Non-Agreement State of Connecticut. He further stated that after the NRC inspection, he understood that the states of Vermont and Connecticut, as well as Federal facilities fall within NRC jurisdiction. The NRC raised questions relating to the method(s) GEC utilized to determine jurisdictional status, given that the State of Rhode Island (RIDOH) and Commonwealth of Massachusetts (Commonwealth) Departments of Health had notified him of the requirements for conducting licensed activities outside the jurisdiction of his State of Rhode Island license as part of their inspection processes. Mr. Geisser was unable to provide specific information on the process used for determining jurisdictional status. In fact, during the predecisional enforcement conference (PEC), Mr. Geisser questioned the NRC on whether or not he was required to file for reciprocity for work already performed by GEC at a National Guard facility. Following the NRC questions, Mr. Geisser stated that his planned corrective action was to forego the use of portable nuclear gauges in Federal jurisdiction. The NRC staff indicated the information would be reviewed and considered in the enforcement decision.

Mr. Geisser acknowledged the second apparent violation and disagreed with the Office of Investigation's (OI's) conclusion that he engaged in deliberate misconduct. He acknowledged that he had previously deliberately conducted activities using licensed material in the Commonwealth of Massachusetts without filling for reciprocity with the Commonwealth, and noted that the Commonwealth had taken enforcement action for that violation. Mr. Geisser

further stated that he did not act to deliberately violate reciprocity requirements when engaging in licensed activities in areas of exclusive NRC jurisdiction. He reiterated that he felt his Rhode Island license covered licensed activities for all locations within Rhode Island. The NRC noted that the State of Rhode Island had provided information on the jurisdictional status of Federal facilities, such as US Air Force and Navy bases, during meetings and correspondence with GEC in the 2005 – 2009 timeframe. Following the NRC questions, Mr. Geisser reiterated that he did not act deliberately when he engaged in the use of licensed material in areas of Federal jurisdiction without filing for reciprocity. However, Mr. Geisser could not explain how he applied the prior notification from RIDOH of the need for NRC approval to work in areas of Federal jurisdiction, and the prior violation in the Commonwealth for failing to file for reciprocity, to his decision to work in areas exclusive Federal jurisdiction without obtaining an NRC license or filing for reciprocity with the NRC. The NRC staff indicated the information provided by Mr. Geisser would be reviewed and considered in the enforcement decision.

Following an NRC caucus, there was a discussion about GEC's plans to determine the status of areas of possible Federal jurisdiction in the future. Mr. Geisser stated that he had hired a new radiation safety officer who would be handling the day-to-day aspects of business operations. He further stated that he would employ non-radioactive methods for environmental testing if asked to perform work in NRC jurisdiction.

Mr. Clifford thanked Mr. Geisser for his attendance and indicated he would be informed of final NRC action after the results of the PEC were reviewed.

LIST OF PERSONS ATTENDING

NRC Staff:

James Clifford, Director, Division of Nuclear Materials Safety (DNMS)
 Emily Monteith, Acting Regional Counsel, Office of the Regional Administrator (ORA)
 Blake Welling, Chief, Commercial, Industrial, R&D, and Academic Branch, DNMS
 Shawn Seeley, Health Physicist, Medical Branch, DNMS
 Cherie Crisden, Enforcement Specialist, ORA
 Michele Burgess, Sr. Regional Coordinator, Office of Federal and State Materials and
 Environmental Management Programs (FSME)
 Thomas Marenchin, Enforcement Specialist, Office of Enforcement

Geisser Engineering Corporation Representative:

George J. Geisser, III, President and Owner

ENCLOSURE 2

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Geisser Engineering Corporation
Riverside, Rhode Island

Docket No. 15000038
License No. RI 3L-050-01
EA-13-105

During an NRC inspection conducted between May 9, 2012, and August 15, 2013, and an investigation initiated on June 20, 2012, and completed on April 26, 2013, multiple occurrences of a violation of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violation and associated civil penalty are set forth below:

10 CFR 30.3 requires, in part, that except for persons exempt as provided in this part and part 150 of this chapter, no person shall own, possess, or use byproduct material except as authorized in a specific or general license issued pursuant to the regulations in 10 CFR 30.

10 CFR 150.20(a) states, in part, that any person who holds a specific license from an Agreement State is granted an NRC general license to conduct the same activity in Non-Agreement States and areas of exclusive Federal jurisdiction within Agreement States, subject to the provisions of 10 CFR 150.20(b).

10 CFR 150.20(b)(1) requires, in part, that any person engaging in activities in Non-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," a copy of its Agreement State specific license, and the appropriate fee, with the Regional Administrator of the appropriate NRC regional office.

Contrary to the above, between October 21, 2009, and June 23, 2011, Geisser Engineering Corporation, which is authorized for possession and use of radioactive material under a Rhode Island Agreement State license, used portable devices containing byproduct material within NRC jurisdiction on 22 occasions without submitting NRC Form 241, a copy of its Agreement State specific license, and the required fee for calendar years 2009, 2010, and 2011, with the Regional Administrator of the appropriate NRC regional office.

This is a Severity Level II violation. (Section 6.9)
Civil Penalty - \$11,200 (EA-13-105)

Pursuant to the provisions of 10 CFR 2.201, Geisser Engineering Corporation (GEC) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with copies to the Document Control Desk, Washington, DC 20555-0001, and the Regional Administrator, ATTN: Regional Administrator, Region I, 2100 Renaissance Boulevard, Suite 100, King of Prussia, PA 19406, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; (EA-13-105)" and should include for the alleged violation: (1) the reason for the violation, or, if contested, the basis for disputing the

violation or severity level; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken; and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

GEC may pay the civil penalty proposed above in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice. Should GEC fail to answer within 30 days of the date of this Notice, the NRC will issue an order imposing the civil penalty. Should GEC elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violation(s) listed in this Notice, in whole or in part; (2) demonstrate extenuating circumstances; (3) show error in this Notice; or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the response should address the factors addressed in Section 2.3.4 of the Enforcement Policy. Any written answer addressing these factors pursuant to 10 CFR 2.205 should be set forth separately from the statement or explanation provided pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of GEC is directed to the other provisions of 10 CFR 2.205 regarding the procedure for imposing (a) civil penalty.

Upon failure to pay any civil penalty which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205 to be due, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

Because 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> to the extent possible, it 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, then 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 material, 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). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21. If Classified Information is necessary

to provide an acceptable response, please provide the level of protection described in 10 CFR Part 95.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days of receipt.

Dated this 20th day of March, 2014.