

NUCLEAR REGULATORY COMMISSION

[EA-13-105; NRC-2014-0186]

In the Matter of Geisser Engineering Corporation

AGENCY: Nuclear Regulatory Commission.

ACTION: Order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an order imposing a civil monetary penalty to Geisser Engineering Corporation. The order requires Geisser Engineering Corporation to pay a civil penalty in the amount of \$8,400.

DATES: *Effective Date:* See attachment.

ADDRESSES: Please refer to Docket ID **NRC-2014-0186** when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this action by the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2014-0186**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public](#)

[Documents](#)” and then select “[Begin Web-based ADAMS Search.](#)” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

- **NRC’s PDR:** You may examine and purchase copies of public documents at the NRC’s PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Thomas Marenchin, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001; telephone: 301-415-2979, e-mail: Thomas.Marenchin@nrc.gov.

SUPPLEMENTARY INFORMATION: The text of the Order and appendix are attached.

Dated at Rockville, Maryland, this 31st day of July 2014

For the Nuclear Regulatory Commission

/RA/

Patricia K. Holahan, Ph.D., Acting Director
Office of Enforcement

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of:

Geisser Engineering Corporation
Riverside, Rhode Island

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

ORDER IMPOSING CIVIL MONETARY PENALTY

I

Geisser Engineering Corporation (GEC) is the holder of a materials license issued by the State of Rhode Island, an NRC Agreement State. The Rhode Island license authorizes the possession, use, and storage of portable moisture density gauges containing radioactive material within the State of Rhode Island. GEC, as holder of a State license, may perform work authorized by its license in other States or Federal jurisdictions provided GEC files for reciprocity with the appropriate regulatory authority.

II

An inspection of the GEC's activities was conducted on May 9, 2012, with continued in-office review through August 15, 2013. The inspection identified one violation involving multiple examples of GEC's failure to file for reciprocity with the U.S. Nuclear Regulatory Commission (NRC) prior to conducting work in NRC jurisdiction. In addition to the inspection activities, the NRC Office of Investigations conducted an investigation 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. The investigation concluded that the president and owner of GEC

3

deliberately engaged in the use of licensed material in the State of Connecticut and at the Newport Naval Station in Rhode Island, areas of NRC jurisdiction, without filing for reciprocity with the NRC. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon GEC by letter dated March 20, 2014. The Notice states the nature of the violation, the provision of the NRC's requirements that GEC violated, and the amount of the civil penalty proposed for the violation. GEC responded to the Notice in a letter dated April 15, 2014. In its response and in subsequent communications with the NRC, GEC acknowledged the violation, but disputed the willful aspect of the violation (the willful aspect of the violation will be addressed in a separate correspondence) and requested that the NRC mitigate the civil penalty. Specifically, in an e-mail correspondence dated April 30, 2014, the president of GEC stated, in part, that GEC was seeking relief from the proposed civil penalty due to the unexpected payment of a fine to the Commonwealth of Massachusetts (Commonwealth) for GEC's failure to file for reciprocity prior to using a nuclear density gauge in the Commonwealth's jurisdiction. The president also stated that payment of the proposed NRC civil penalty would pose a financial hardship for GEC.

III

After consideration of GEC's response and statement of fact, explanation, and argument for mitigation contained therein, the NRC has determined, as set forth in the Appendix to this Order, there is an adequate basis to reduce the civil penalty for the associated NRC violation, that the violation occurred as stated, that the amount of the proposed penalty should be reduced by \$2800 (25%), and a civil penalty in the amount of \$8,400 should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, IT IS HEREBY ORDERED THAT: GEC pay a civil penalty in the amount of \$8,400 within 30 days of the date of this Order, in accordance with NUREG/BR-0254. In addition, at the time payment is made, GEC shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

V

In accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) 2.202, GEC must, and any other person adversely affected by this Order may, submit an answer to this Order within 30 days of the date of this Order. In addition, GEC may demand a hearing on all or part of this Order. Any other person adversely affected by this Order may request a hearing on this Order within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, NRC, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the

NRC E-Filing rule (72 FR 49139, August 28, 2007, as amended by 77 FR 46562, August 3, 2012), codified in pertinent part at 10 CFR Part 2, Subpart C. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/getting-started.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, web-based

submission form available from the NRC's Electronic Information Exchange (EIE). In order to serve documents through EIE, users will be required to install a web browser plug-in from the NRC web site. Further information on the web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public web site at <http://www.nrc.gov/site-help/e-submittals.html>.

After the Office of the Secretary has created a docket and a participant has obtained a digital ID certificate, then the participant may submit a demand for hearing or request for hearing or petition for leave to intervene through the EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time (ET) on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at

MSHD.Resource@nrc.gov, or by a toll-free call at (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at <http://ehd1.nrc.gov/ehd/>, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, participants are requested not to include copyrighted materials in their submission, except for limited excerpts that serve the

purpose of the adjudicatory filings and would constitute a Fair Use application.

If a person other than GEC requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f). If a hearing is requested by GEC or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for a hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 30 days from the date this Order is issued without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

If payment has not been made by the time specified above, the matter may be referred to the Attorney General for further action, including collection.

Dated at Rockville, Maryland, this 31st day of July 2014

For the Nuclear Regulatory Commission

/RA/

Patricia K. Holahan, Ph.D., Acting Director
Office of Enforcement

APPENDIX

EVALUATION AND CONCLUSION

On March 20, 2014, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation of U.S. Nuclear Regulatory Commission (NRC) requirements involving the Geisser Engineering Corporation's (GEC's) failure to file for reciprocity prior to conducting work in NRC jurisdiction. The violation was identified during an NRC inspection. GEC responded to the Notice in a letter dated April 15, 2014. GEC acknowledged the violation, but requested mitigation of the civil penalty assigned to GEC. The NRC's evaluation and conclusion regarding GEC's request to mitigate the civil penalty are as follows:

Restatement of Violation as provided in the Notice (March 20, 2014)

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)

GEC's Response to the Violation

In its letter dated April 15, 2014, GEC acknowledged the violation, but disagreed with the NRC's conclusion that the GEC president willfully (i.e., deliberately) caused the violation. The NRC's re-evaluation of the willful aspect of the violation is addressed in a separate correspondence to the president of GEC.

Summary of GEC's Request for Mitigation of Civil Penalty Amount

In its response, GEC requested relief from the civil penalty and requested that the NRC consider the penalty imposed on GEC by the Commonwealth of Massachusetts for the use of a nuclear density gauge in its jurisdiction without filing for reciprocity.

In the April 15, 2014, letter, and in an email correspondence dated April 30, 2014, GEC requested relief from the proposed civil penalty due to the unexpected payment to the Commonwealth of Massachusetts for the use of a nuclear density gauge in its jurisdiction without filing for reciprocity. Specifically, GEC stated that payment of the additional NRC proposed civil penalty would pose a financial hardship for GEC. To support its request, on May 5, 2014, GEC submitted by e-mail GEC's tax returns for calendar years 2011 and 2012.

NRC Evaluation of GEC's Request for Mitigation of Civil Penalty Amount

In response to GEC's request, the NRC reviewed GEC's financial information, the documentation included as part of the inspection and investigation, and the applicable enforcement guidance to determine the appropriate action.

The Enforcement Policy Section 2.3.4 allows the use of discretion in application of a Civil Penalty, including a secondary consideration of the licensee's ability to pay. Specifically, it is not the NRC's intention that the economic impact of a civil penalty be so severe that it puts a licensee out of business. However, the Enforcement Policy Section 3.6 also states that one of the civil penalty assessment factors to be considered in applying discretion is the presence of

willful behavior that caused a noncompliance with NRC requirements in order to obtain an economic benefit. The NRC determined that Mr. Geisser, President of GEC, acted deliberately and provided GEC an economic benefit of not paying NRC reciprocity fees for calendar years 2009, 2010, and 2011. The reciprocity fees for those years provided GEC an economic benefit of approximately \$6,000.

In the NRC's evaluation of GEC's request, the NRC considered the potential financial implications and hardships that payment of the proposed civil penalty would place on GEC, the financial penalty taken previously against GEC by the Commonwealth of Massachusetts, and the economic benefit GEC received for not complying with NRC requirements. Specifically, the NRC considered that a substantial financial penalty has already been imposed on GEC by the Commonwealth for the same violation during the same time-frame, although in different jurisdictions, and that payment of the proposed NRC civil penalty may pose a financial hardship for GEC.

The NRC determined that GEC provided an adequate basis that the NRC civil penalty may pose a financial hardship for GEC. However, while some reduction of the full civil penalty is warranted, the NRC also considered that the civil penalty should account for the economic benefit that GEC gained by not complying with NRC requirements to file for reciprocity with the NRC and pay the required fees.

NRC Conclusion

Based on its evaluation, the NRC has concluded that the violation occurred as stated and that GEC provided an adequate basis for mitigation of the civil penalty. Consequently, a civil penalty in the amount of \$8,400 is imposed.

