



UNITED STATES
NUCLEAR REGULATORY COMMISSION

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

December 18, 2014

EA-14-030

Kevin Parris
President
Dominion Engineering Associates, Inc.
8511 Indian Hills Court, Ste. 202
Fredericksburg, Virginia 22407

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY-
\$3,500 AND NRC INVESTIGATION REPORT NO. 1-2013-013

Dear Mr. Parris:

This letter provides you with the NRC enforcement decision for the apparent violation identified during an investigation conducted by the NRC Office of Investigations (OI) between April 22, 2013, and January 31, 2014, of activities conducted by Dominion Engineering Associates, Inc. (DEA), located in Fredericksburg, Virginia. The apparent violation involved DEA's failure to file for reciprocity prior to conducting work in NRC jurisdiction. Blake Welling, Chief, NRC Region I Commercial, Industrial, R&D, and Academic Branch, discussed the apparent violation during a telephonic meeting with you on August 14, 2014.

The investigation was conducted to determine whether you, as president of DEA, deliberately directed the use of nuclear density gauges containing licensed material in NRC jurisdiction without filing for reciprocity with the NRC. The apparent violation and the results of the investigation were described in the NRC letter transmitting the factual summary of the OI report dated August 11, 2014 (ML14224A390¹).

In our letter dated August 11, 2014, we provided you the opportunity to address the apparent violation by attending a predecisional enforcement conference, providing a written response, or requesting Alternative Dispute Resolution before we made our final enforcement decision. In the letter, the NRC informed you that additional information pertaining to DEA's corrective actions for the apparent violation was needed before making its enforcement decision. Specifically, the NRC required that DEA confirm the NRC's understanding that DEA obtained a non-nuclear density gauge for work in areas under NRC jurisdiction and provide the NRC information on how DEA planned to determine jurisdictional status of its work locations prior to using any nuclear density gauges containing licensed material in NRC jurisdiction. In a letter dated September 1, 2014, you provided a response to the apparent violation. Your letter stated

¹ Designation in parentheses refers to an Agency-wide Documents Access and Management System (ADAMS) accession number. Unless otherwise noted, documents referenced in this letter are publicly-available using the accession number in ADAMS

that you acknowledged that the apparent violation occurred, that the violation was committed with careless disregard, and that you implemented several corrective actions to address the apparent violation including obtaining a non-nuclear gauge to conduct work in areas of exclusive Federal jurisdiction, and in areas not authorized by its Virginia (VA) license.

In your response, you confirmed that as part of its corrective actions, DEA purchased a non-nuclear gauge. However, the response did not provide enough information on what corrective actions DEA would take to address how it would determine the jurisdictional status of its work locations prior to using any nuclear density gauges containing licensed material.

In a telephone conversation on October 9, 2014, with Mr. Welling of my staff, you clarified the corrective steps DEA will take to determine jurisdictional status for work locations. Specifically, DEA stated that prior to beginning work on a new project, it would contact the program manager of the project and the Federal agency that controls the facility, if applicable, to ascertain what agency is responsible for jurisdiction of the site.

Based on the information developed during the investigation and the information that you provided in your response dated September 1, 2014, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it were described in the NRC letter transmitting the factual summary of the OI report dated August 11, 2014. The violation involves the failure to file for reciprocity prior to conducting work in NRC jurisdiction, as required by 10 CFR 150.20.

Specifically, on approximately 42 occasions between November 19, 2010, and April 17, 2013, DEA used nuclear gauges in Washington, DC and at the Marine Corps Base Quantico (MCBQ) in the Commonwealth of VA, areas of exclusive federal jurisdiction, without filing NRC Form 241, "Report of Proposed Activities in Non-Agreement States," a copy of its VA specific license, and the appropriate fee with the Regional Administrator of the appropriate NRC regional office.

The violation has been categorized at Severity Level (SL) III in accordance with the Enforcement Policy because the NRC was not informed of the activities occurring in Washington, DC and at the MCBQ and therefore, was not provided the opportunity to conduct inspections of licensed activities. In addition, the evidence gathered during the OI investigation concluded that you, as president of DEA, willfully (in careless disregard) directed the use of nuclear density gauges containing licensed material in NRC jurisdiction.

In accordance with the NRC Enforcement Policy, a civil penalty in the amount of twice the base civil penalty of \$3,500 is considered for willful violations where identification and corrective action credit is not warranted. Because the NRC has determined that your actions were willful and that the violation was not self-identified, the NRC considered whether credit was warranted for corrective actions in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy. In this case, the NRC concluded that credit is warranted for DEA's corrective actions taken to address the violation. Specifically, DEA: (1) purchased a non-nuclear density gauge for use in areas of exclusive federal jurisdiction and areas where DEA is not licensed to perform work; and (2) outlined a process for determining jurisdictional status of work locations to include contacting the program manager of the project and the Federal agency that controls the facility, if applicable, to ascertain what agency is responsible for jurisdiction of the site.

Therefore, to emphasize the importance of compliance with NRC regulations and of prompt 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 in the base amount of \$3,500 for the Severity Level III violation. In addition, issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection oversight.

The NRC has concluded that information regarding: (1) the reason for the violation; or if contested, the basis for disputing the violation; (2) the corrective steps that have been taken and the results achieved; and (3) the corrective steps that will be taken; and (4) the date when full compliance was achieved is already adequately addressed on the docket in this letter, in your letter dated September 1, 2014, and in the NRC letter dated August 11, 2014. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosure 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 Website at <http://www.nrc.gov/reading-rm/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)

Daniel H. Dorman
Regional Administrator

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalty
2. NUREG/BR-0254, "Payment Methods"

cc w/enclosures:

Raymond Boyd, Radiation Safety Officer
Steve A. Harrison, Director
Office of Radiological Health
Commonwealth of Virginia

In addition, issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection oversight.

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Sincerely,
/RA/
 Daniel H. Dorman
 Regional Administrator

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalty
2. NUREG/BR-0254, "Payment Methods"

cc w/enclosures:

Raymond Boyd, Radiation Safety Officer

Steve A. Harrison, Director

Office of Radiological Health

Commonwealth of Virginia

DOCUMENT NAME: S:\Enf-allg\Enforcement\Proposed-Actions\Region1\Dominion Eng NOV-III CP EA-14-030.docx

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DATE	11/4/14	11/20/14	11/14/14	11/18/14	11/20/14
OFFICE	OE	NMSS	OGC	RI/DNMS	RI/RA
NAME	S Ghasemian via email	M Burgess via email*	L Clark via email NLO*	D Collins/JD for*	D Dorman/DHD*
DATE	12/12/14	11/24/14	12/11/14	12/16/14	12/18/14

* See previous concurrence page

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RII, RIII, RIV (D Gamberoni; E Dunkan; V Campbell)

C Scott, OGC

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H Bell, OIG

C McCrary, OI

J Teator, OI

M Holmes, OI

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Region I OE Files (with concurrences)

ENCLOSURE 1

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Dominion Engineering Associates, Inc.
Fredericksburg, VA

Docket No. 15000045
License No. VA 630-462-1
EA-14-030

During an NRC investigation conducted between April 22, 2013, and January 31, 2014, a violation of NRC requirements was 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 violation and the associated civil penalty is 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 manufacture, produce, transfer, receive, acquire, own, possess or use byproduct material except as authorized in a specific or general license issued pursuant to the regulations in 10 CFR Part 30.

10 CFR 150.20(a) provides, 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 provided that the provisions of 10 CFR 150.20(b) have been met.

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 November 19, 2010, and April 17, 2013, Dominion Engineering Associates, Inc., which is authorized for possession and use of radioactive material under a Virginia Agreement State license, used portable devices containing byproduct material within NRC jurisdiction on approximately 42 occasions without a specific license issued by the NRC, and without submitting NRC Form 241 and the appropriate fee for calendar years 2010, 2011, 2012, and 2013 with the Regional Administrator of the appropriate NRC regional office.

This is a Severity Level III violation. (Enforcement Policy Section 6.9)

Civil Penalty - \$3,500

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence and the date when full compliance was achieved is already adequately addressed on the docket in this letter, in your letter dated September 1, 2014, and in the NRC letter dated August 11, 2014. However, if the description therein does not accurately reflect your position or your corrective actions, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 within 30 days of the date of the letter transmitting this Notice of Violation. In that case, or if you choose

to respond, clearly mark your response as a "Reply to a Notice of Violation," and send it to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S., Nuclear Regulatory Commission, Region I, 2100 Renaissance Boulevard, King of Prussia, PA 19406, and the Document Control Desk, Washington, DC 20555-0001.

The Licensee 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 the Licensee fail to answer within 30 days of the date of this Notice, the NRC will issue an order imposing the civil penalty. Should the Licensee 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 violations 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 the Licensee 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.

The responses noted above, i.e., Reply to Notice of Violation, Statement as to payment of civil penalty, and Answer to a Notice of Violation, should be addressed to: Patricia K. Holahan, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I, 2100 Renaissance Boulevard, King of Prussia, PA 19406, and the Document Control Center, Washington, DC 20555-0001.

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or in ADAMS. 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, 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 that such material is

withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (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.

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

Dated this 18th day of December, 2014