



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

April 3, 2017

EA-15-124
Docket No. 15000019

MD License No. 31-275-01

Sunny Kim, P.E.
President
Kim Engineering, Inc.
11127 New Hampshire Avenue
Silver Spring, MD 20904

SUBJECT: NRC INSPECTION REPORT NO. 15000019/2015001, KIM ENGINEERING, INC., BELTSVILLE, MARYLAND SITE, AND NRC OFFICE OF INVESTIGATIONS REPORT NO. 1-2015-032

Dear Mr. Kim:

This letter refers to the NRC inspection conducted between June 4, 2015, and March 10, 2017, at your Kim Engineering, Inc., (KEI) facility in Beltsville, Maryland. The purpose of the inspection was to review your corrective actions for a Severity Level III Notice of Violation (NOV) issued on December 23, 2014. The NOV was for KEI's use of licensed materials (in portable nuclear gauges) in areas of exclusive Federal jurisdiction without filing for reciprocity as required by Title 10 of the Code of Federal Regulations (10 CFR), Section 150.20 [ML14357A264]. The enclosed report provides the results of the inspection. The inspector discussed the preliminary inspection findings with you at the conclusion of the on-site portion of the inspection on August 20, 2015. A final exit briefing was conducted (telephonically) with you on March 10, 2017. During the inspection, the NRC determined that KEI's corrective actions were not implemented effectively. Specifically, the inspector found that KEI used portable gauges in 2015 at Bolling Air Force Base, Fort Reno, and NASA facilities, all areas of exclusive Federal jurisdiction, but had not filed for reciprocity, as required.

Based on the results of this inspection, one apparent violation involving multiple examples of failures to file for reciprocity was identified, (Enclosure 1). This apparent violation, which is documented in the enclosed report, is being considered for escalated enforcement action, including a civil penalty, in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. Since the NRC has not made a final determination in this matter, a Notice of Violation is not being issued at this time. Please be advised that the number and characterization of the apparent violations described herein may change as a result of further NRC review.

Before the NRC makes its enforcement decision regarding the apparent violation, we request that you provide information regarding KEI's corrective actions for the issue. The written response should include: (1) the reason for the apparent violation or, if contested, the basis for disputing the apparent violation; (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. You should be aware that the promptness and comprehensiveness of your actions will be considered in assessing any civil penalty for the apparent violations. The

guidance in the excerpt from NRC Information Notice 96-28, "Suggested Guidance Relating to Development and Implementation of Corrective Action," may be helpful. The guidance is included on NRC's Web site at <https://www.nrc.gov/docs/ML0728/ML072890794.pdf>.

The written response should be sent to the NRC within 30 days of the date of this letter. Your response may reference or include previously docketed correspondence, if the correspondence adequately addresses the required response. You should clearly mark the response as a "Response to Apparent Violation; EA-15-124," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator, NRC Region I, 2100 Renaissance Boulevard, Suite 100, King of Prussia, PA 19406. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. If an adequate response is not received within the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision or schedule a pre-decisional enforcement conference (PEC).

In lieu of providing this written response, you may choose to provide your perspective on this matter, including the significance, cause, and corrective actions, as well as any other information that you believe the NRC should take into consideration by: (1) requesting a PEC to meet with the NRC and provide your views in person; or (2) requesting Alternative Dispute Resolution (ADR).

If you choose to request a PEC, the meeting should be held in our office in King of Prussia, PA, within 30 days of the date of this letter. The conference will include an opportunity for you to provide your perspective on these matters and any other information that you believe the NRC should take into consideration before making an enforcement decision. The topics discussed during the PEC may include 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. If a PEC is held, it will be open for public observation and the NRC will issue a press release to announce the conference time and date.

In lieu of a PEC, you 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; a voluntary, informal process in which a trained neutral 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 ADR program can be obtained at <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 program as a neutral third party. Please contact ICR at 877-733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR. The ADR mediation session would be closed to public observation; however, the time and date would be publicly-announced. The mediation session should be held in our office in King of Prussia within 45 days of the date of this letter.

Please contact Blake Welling, Chief, Commercial, Industrial, R&D, and Academic Branch, at 610-337-5205 within **10** days of the date of this letter to notify the NRC which of the above options you choose.

Separately, the NRC Office of Investigations (OI), initiated an investigation (Case No. 1-2015-032) on September 9, 2015, to determine whether any KEI employees willfully caused KEI to use its nuclear gauges in 2015 in areas under exclusive Federal jurisdiction without filing for reciprocity. Based on the testimonial and documentary evidence obtained during the OI investigation, the NRC concluded that there were no willful acts regarding the failure to file for reciprocity. Please note that final NRC investigation documents, such as the OI report described above, may be made available to the public under the Freedom of Information Act (FOIA) subject to redaction of information appropriate under FOIA. Requests under the FOIA should be made in accordance with 10 CFR 9.23, "Requests for Records," which can be accessed at the NRC Web Site at <http://www.nrc.gov/reading-rm/doc-collections/cfr/part009/part009-0023.html>.

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')**. You 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).

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 from the NRC Agency-wide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-material-rm/adams.html>.

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

Sincerely,



James M. Trapp, Director
Division of Nuclear Materials Safety

Enclosures:

1. Apparent Violation
2. Inspection Report No. 15000019/2015001

cc w/Encls: State of Maryland

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- 1. Apparent Violation
- 2. Inspection Report No. 15000019/2015001

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APPARENT VIOLATION

10 CFR 30.3(a) states, 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 Part 30.

10 CFR 150.20(a)(1) 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).

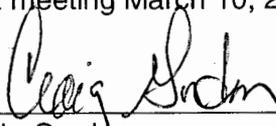
10 CFR 150.20(b) requires, in part, that any person engaging in activities in Non-Agreement States or in an area of exclusive Federal jurisdiction within an Agreement State shall, at least 3 days before engaging in each such activity for the first time in a calendar year, file a submittal containing 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 January 5, 2015, and August 14, 2015, Kim Engineering, Inc., a licensee of the State of Maryland, used byproduct material in areas under NRC jurisdiction on numerous occasions without filing NRC Form 241, "Report of Proposed Activities in Non-Agreement States," with the Regional Administrator of the appropriate NRC regional office.

U.S. NUCLEAR REGULATORY COMMISSION
REGION I

INSPECTION REPORT

Inspection No. 15000019/2015001
Docket No. 15000019
MD License No. 31-275-01
EA No. EA-15-124
Licensee: Kim Engineering, Inc. (KEI)
Address: 11127 New Hampshire Ave.
Silver Spring, Maryland 20904
Locations Inspected: 11900 Baltimore Ave., Suite F
Beltsville, Maryland
Inspection Dates: June 4, 2015 and August 20, 2015
Exit meeting March 10, 2017

Inspector: 
Craig Gordon
Senior Health Physicist
Commercial, Industrial, R&D and
Academic Branch
Division of Nuclear Materials Safety

March 28, 2017
date

Approved By: 
Blake Welling, Chief
Commercial, Industrial, R&D and
Academic Branch
Division of Nuclear Materials Safety

3/29/2017
date

EXECUTIVE SUMMARY

Kim Engineering, Inc.
NRC Inspection Report No. 15000019/2015001

Kim Engineering, Inc. (KEI) is an engineering consultant firm located in Silver Spring and Beltsville, Maryland that provides engineering services in Maryland, the District of Columbia, and Virginia. Under Maryland License No. 31-275-01, the company is authorized to use portable moisture/density gauges containing sealed sources of radioactive material at temporary job sites within the State.

In December 2014, the NRC issued KEI a Severity Level (SL) III Notice of Violation for failure to file for reciprocity prior to conducting work in areas of exclusive Federal jurisdiction in calendar years 2010 to 2014.

This special inspection was initiated on June 4, 2015, to review the corrective actions committed to by KEI in response to the violation. The inspector found that KEI had not filed for reciprocity in 2015, and had used portable gauges at Bolling Air Force Base, Washington, D.C. on January 5, 2015, and at least five additional occasions in NRC jurisdiction until April 29, 2015. A second inspection was made to the site on August 20, 2015, at which time the inspector identified that KEI had used portable gauges on 19 additional occasions between June 16, 2015, and August 14, 2015, at Fort Reno and NASA facilities without the required filing.

In a report issued on January 10, 2017, the NRC Office of Investigations (OI) completed an investigation into the circumstances surrounding KEI's repeated failures to file for reciprocity. Based on the testimonial and documentary evidence obtained during the OI investigation, the NRC concluded that there were no willful acts regarding the failure to file for reciprocity.

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), on numerous occasions in calendar year 2015.

REPORT DETAILS

I. Organization and Scope of the Program (MC 1220)

a. Inspection Scope

The inspector reviewed the organization and scope of the licensee's portable gauge program relative to conduct of activities under reciprocity in areas of NRC jurisdiction. Records of reciprocity filings were reviewed and interviews were held with KEI management staff.

b. Observations and Findings

KEI is an engineering firm located in Beltsville and Silver Spring, Maryland. The firm provides engineering services in Maryland, the District of Columbia, and Virginia using portable moisture density gauges. KEI holds a Maryland Department of the Environment (MDE) radioactive materials license, License No. 31-275-01, which authorizes possession, use, and storage of multiple portable nuclear moisture density gauges containing 11 millicuries (mCi) of cesium-137 and 50 mCi of americium-241 at temporary job sites within the State.

c. Conclusions

No violations of NRC requirements were identified.

II. Management Oversight of the Program

a. Inspection Scope

The inspector reviewed the management oversight and implementation of the reciprocity program, and KEI's use of portable gauges in areas of NRC jurisdiction. Inspection information was obtained through review of utilization logs, related records, and interviews with the company president and managers involved in making reciprocity requests to the NRC.

b. Observations and Findings

During the previous inspection, the NRC found that KEI had failed to file for reciprocity prior to conducting work in NRC jurisdiction on approximately 45 occasions between November 9, 2010, and July 7, 2014. On December 23, 2014, the NRC issued KEI a SL III Notice of Violation.

In response to the violation KEI immediately ceased licensed activities in Washington, D.C., Maryland, and Virginia; filed an NRC Form 241 and paid the appropriate fee to continue work for the remainder of 2014; and conducted training sessions by the company President for management and staff on the reciprocity process and NRC requirements. NRC review of KEI's corrective actions found they had adequately addressed non-compliance issues, and full compliance was achieved.

A special inspection was conducted on June 4, 2015, to follow up and review the corrective actions committed to by KEI in response to the violation. The inspector

reviewed KEI's utilization logs and found that the licensee's portable gauges were transported from its Beltsville, Maryland office and used at Bolling Air Force Base, Washington, D.C. Records showed the first use of a gauge in NRC jurisdiction occurred on January 5, 2015, just two weeks after NRC's enforcement letter to KEI, and continued on at least five additional occasions until April 29, 2015.

The inspector's interview with the KEI President indicated that he was the only KEI individual designated to file for reciprocity. He appeared to understand and have good knowledge of the licensee's responsibilities to ensure KEI would meet NRC reciprocity requirements. To address the 2014 violation, he engaged management staff by assignment of responsibilities for reciprocity, and held occasional training sessions with KEI technicians to review the information. Despite his familiarity with the process and staff training, filing for calendar year 2015 had not occurred.

A second follow-up inspection was made to the site on August 20, 2015, at which time the inspector identified that KEI had used portable gauges on 19 additional occasions between June 16, 2015, and August 14, 2015, at Fort Reno and NASA facilities without properly filing requests to the NRC.

The KEI President explained that his attention throughout the year was dedicated to managing higher priority business issues of the company, and that he relied on management staff to inform him when filings were necessary for scheduled work. He stated that he had delegated activities related to reciprocity to the KEI laboratory manager and authorized users with the expectation that compliance would be achieved. Work that was planned and had been performed by KEI staff in NRC jurisdiction was not reviewed by the President, resulting in apparent oversight for the required reciprocity filings. After the August 2015 site inspection, the licensee filed for initial reciprocity filing for 2015, and paid the required fee.

From September 9, 2015, to January 10, 2017, the NRC's Office of Investigations (OI) conducted an investigation into the circumstances surrounding KEI's repeated failures to file for reciprocity. OI's investigation was conducted to determine whether any KEI employees willfully caused KEI (a Maryland licensee) to violate NRC requirements pertaining to filing for reciprocity prior to performing activities at temporary jobsites in areas under exclusive Federal jurisdiction.

OI determined that KEI failed to file for reciprocity because of a lack of management oversight, which was due to an ineffective delegation of responsibility. OI also found that a lack of communication between KEI employees responsible for adherence to NRC regulations was a contributing factor to the failure to meet the NRC reciprocity requirements. Although a breakdown was observed, based on the testimonial and documentary evidence obtained during the OI investigation, the NRC concluded that there were no willful acts regarding the failure to file for reciprocity.

The inspector found that commitments for corrective actions from the violation identified in 2014 were not implemented effectively. This was evidenced by KEI's subsequent failure in 2015 to determine that filing for reciprocity was required, with the first occurrence taking place within one month of NRC escalated enforcement actions issued against KEI. As a result, 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).

After discussions with the inspector during the August 2015 NRC inspection, KEI restored compliance by providing proper filings for the remainder of 2015 and CY 2016, and paid the reciprocity fee for each year they continued to work. With regard to root causes related to the problem, the President indicated the company had undergone several changes, which affected the program. These included relocating the main office (including gauges) to Beltsville, Maryland, experiencing an increase in contract work involving key staff, and appointment of a new laboratory manager, who had been assigned the responsibility for oversight of the gauge program.

c. Conclusions

One apparent violation was identified.

10 CFR 30.3(a) states, 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 Part 30.

10 CFR 150.20(a)(1) 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) requires, in part, that any person engaging in activities in Non-Agreement States or in an area of exclusive Federal jurisdiction within an Agreement State shall, at least 3 days before engaging in each such activity for the first time in a calendar year, 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 January 5, 2015, and August 14, 2015, Kim Engineering, Inc., a licensee of the State of Maryland, used byproduct material in areas under NRC jurisdiction on numerous occasions without filing NRC Form 241, "Report of Proposed Activities in Non-Agreement States," with the Regional Administrator of the appropriate NRC regional office.

III. Exit Meeting

On March 10, 2017, the inspector conducted an exit meeting by telephone with Mr. S. Kim, President KEI, to discuss the apparent violation and corrective actions. Mr. Kim acknowledged the inspection results.

PARTIAL LIST OF PERSONS CONTACTED

Licensee

Sunny Kim, President/Radiation Safety Officer
Adel Rashid, Laboratory Manager

INSPECTION PROCEDURES USED

Manual Chapter 1220, Processing of NRC Form 241, "Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, and Offshore Waters," and Inspection of Agreement State Licensees Operating Under 10 CFR 150.20.

LIST OF DOCUMENTS REVIEWED

KEI portable gauge utilization logs and service records for calendar year 2015