



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION I  
2100 RENAISSANCE BLVD.  
KING OF PRUSSIA, PA 19406-2713

May 25, 2017

EA-15-124

Sunny Kim, P.E.  
President  
Kim Engineering, Inc.  
11900 Baltimore Avenue, Suite F  
Beltsville, MD 20705

SUBJECT: KIM ENGINEERING, INC., NOTICE OF VIOLATION AND PROPOSED  
IMPOSITION OF A CIVIL PENALTY - \$7,000 - NRC INSPECTION REPORT  
NO. 15000019/2015001

Dear Mr. Kim:

This letter provides you the U.S. Nuclear Regulatory Commission's (NRC's) enforcement decision for the apparent violation identified during an NRC inspection of activities conducted by Kim Engineering, Inc. (KEI) at temporary jobsites in areas of exclusive federal jurisdiction. The inspection was conducted to review KEI's corrective actions for a Severity Level III (SL III) violation issued on December 23, 2014 (ML14357A264)<sup>1</sup>, related to the 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. During the inspection, the NRC noted that KEI's corrective actions in response to the prior violation were not effective because KEI staff had, on multiple occasions, continued to use portable gauges in areas of exclusive federal jurisdiction without filing for reciprocity. The NRC discussed the apparent new violation during a telephonic exit meeting with you on March 10, 2017. The apparent violation was also described in the NRC inspection report sent to you with a letter dated April 3, 2017 (ML17095A296).

In the NRC letter, we requested that you provide a written response with information regarding KEI's corrective actions for the issue. We also offered you the opportunity to request a pre-decisional enforcement conference or Alternative Dispute Resolution in lieu of providing the written response. In a letter dated April 18, 2017 (ML17125A200), you described the additional corrective actions taken by KEI to address the apparent violation identified on March 10, 2017. Specifically, you stated, in part, that KEI had: (1) established an in-house committee with qualified personnel that focuses on projects that relate to NRC requirements; (2) revised procedures relating to the procurement and execution of projects; (3) instituted weekly meetings to establish staff awareness and training; and (4) involved management in overseeing the implementation and effectiveness of the corrective actions.

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<sup>1</sup>Designation in parentheses refers to an Agency-wide Documents Access and Management System (ADAMS) accession number. Documents referenced in this letter are publicly-available using the accession number in ADAMS.

Based on the information developed during the inspection and provided in your April 18, 2017, letter, the NRC determined that the violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it were described in detail in the subject inspection report.

The violation has been categorized at SL III in accordance with the NRC's Enforcement Policy because of KEI's activities occurring at Bolling Air Force Base, Fort Reno, and NASA facilities; all areas of exclusive federal jurisdiction. The failure to file for reciprocity prior to using licensed materials in areas under NRC jurisdiction interfered with the NRC's ability to inspect KEI's activities to ensure adequate protection of public health and safety during the use of radioactive materials.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$7,000 is considered for a SL III violation. Because your facility has been the subject of escalated enforcement actions within the last two inspections (the aforementioned SL III violation issued on December 23, 2014, for a similar failure to file for reciprocity) the NRC considered whether credit was warranted for licensee identification or corrective action in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy. The NRC determined that identification credit to the licensee was not warranted because the violation was identified by the NRC. However, the NRC concluded that credit was warranted for KEI's corrective actions taken to address the violation. Specifically, the NRC considered that the corrective actions described in KEI's letter dated April 18, 2017, if properly implemented, should prevent additional reoccurrence of this violation. The NRC will conduct a follow-up inspection to evaluate KEI's implementation of these corrective actions within the next six months, in accordance with NRC Inspection Manual Chapter 2800, "Materials Inspection Program." The NRC also considered that, following NRC identification of the apparent violation on March 10, 2017, KEI demonstrated compliance with the reciprocity requirements by submitting filings for the remainder of calendar year 2015 and throughout calendar year 2016.

Taking into account the considerations discussed above, the civil penalty assessment process results in a proposed civil penalty of \$7,000, the base amount. To emphasize the importance of compliance with regulatory requirements and prompt identification 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 the amount of \$7,000. In addition, issuance of this Notice constitutes an escalated enforcement action that may subject you to increased inspection effort in the future.

If you disagree with this enforcement sanction, you may deny the violation, as described in the Notice, or you may request Alternative Dispute Resolution (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 employs 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 ADR program can be found 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's program as a neutral third party. If you are interested in pursuing this issue through the ADR program, please contact: (1) the ICR at (877) 733-9415; and (2) Blake Welling, Chief, Commercial, Industrial, R&D, and Academic Branch, Division of Nuclear Materials Safety, NRC Region I, at 610-337-5205 within 10 days of the date of this letter. You may also contact both ICR and Mr. Welling for additional information. Your submitted signed agreement to mediate using the NRC ADR program would stay the 30-day time period for payment of the civil penalties and the written response, as identified in the enclosed notice, until the ADR process is completed.

The NRC has concluded that information regarding: (1) the reason for the 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 was achieved is already adequately addressed on the docket in NRC Inspection Report No. 15000019/2015001 and your letter dated April 18, 2017. 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, its enclosures, and your response, if you choose to provide one, 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, your response should not include any personal privacy, or proprietary information so that it can be made available to the Public without redaction.

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

Docket No.: 15000019  
MD License No.: 31-275-01

Enclosures:

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

cc w/enclosures: State of Maryland

Letter to S. Kim from Daniel H. Dorman dated

DISTRIBUTION w/encl:

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Region I OE Files (with concurrences)

**ADAMS Accession No.: ML17145A104**

DOCUMENT NAME: S:\Enf-allg\Enforcement\Proposed-Actions\Region1\Kim Engineering NOV-III-CP EA-15-124.docx

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OFFICE	RI/ORA	RI/DNMS	RI/ORA	ORA	OE	NMSS
	M McLaughlin/ MMM*	B Welling/ BDW*	B Klukan/ BMK*	B Bickett/ BAB*	J Peralta via email	M Burgess via email
DATE	5/04/17	5/05/17	5/08/17	5/09/17	5/22/17	5/11/17
OFFICE	RI/DNMS	OGC				RA
NAME	J Trapp/jmt	O Mikula NLO via email				D Dorman/dhd
DATE	5/22/17	5/17/17				05/24/17

\* See previous concurrence page

ENCLOSURE 1

NOTICE OF VIOLATION  
AND  
PROPOSED IMPOSITION OF CIVIL PENALTY

Kim Engineering, Inc.  
Beltsville, Maryland

Docket No. 15000019  
MD License No. 31-275-01  
EA-15-124

During an NRC inspection completed on March 10, 2017, 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 particular violation and 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 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 a general NRC license to conduct the same activity in non-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 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 January 5, 2015, and August 14, 2015, Kim Engineering, Inc., which is authorized for possession and use of radioactive material under a specific license issued by the State of Maryland, used portable devices containing byproduct material within areas of exclusive Federal jurisdiction, on approximately 25 occasions without filing NRC Form 241, "Report of Proposed Activities in Non-Agreement States," with the Regional Administrator of the appropriate regional office.

This is a Severity Level III violation. (Enforcement Policy Section 6.9)  
Civil Penalty - \$7,000 (EA-15-124)

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in NRC Inspection Report No. 15000019/2015001 and in the letter from the licensee, dated April 18, 2017. 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 "Reply to a Notice of Violation; EA-15-124,"

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 1, 2100 Renaissance Boulevard, Suite 100, King of Prussia, PA 16409, and to the Document Control Desk, Washington, DC 20555-0001.

The Licensee may pay the civil penalty proposed above in accordance with NUREG/BR-0254, "Payment Methods," 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 violation 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 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 the 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.

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>. Therefore, to the extent possible, your response should not include any personal privacy or proprietary 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 are required to post this Notice within two working days of receipt.

Dated this 25<sup>th</sup> day of May 2017