



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION IV  
611 RYAN PLAZA DRIVE, SUITE 400  
ARLINGTON, TEXAS 76011-4005

August 25, 2006

EA-06-197

Forsgren Associates, Inc.  
ATTN: Brent E. Crowther  
Regional Manager  
350 North 2nd East  
Rexburg, Idaho 83440

SUBJECT: NRC INSPECTION REPORT NO. 030-32249/06-01, NOTICE OF VIOLATION  
AND EXERCISE OF ENFORCEMENT DISCRETION

Dear Mr. Crowther:

This refers to the inspection conducted June 22, 2006, at your facility in Rexburg, Idaho. This inspection was an examination of activities conducted under your license as they relate to safety and compliance with the Commission's rules and regulations and with the conditions of the license. Within these areas, the inspection consisted of selected examination of procedures and representative records, observations of activities, and interviews with personnel. Preliminary inspection findings were discussed with Mr. William McNaughton at the conclusion of the onsite portion of the inspection. A consultation with NRC's Office of Enforcement was necessary for the use of enforcement discretion as described below. Therefore, the inspection results were discussed with Mr. McNaughton during a final telephonic exit briefing conducted on August 21, 2006.

Based on the results of this inspection, the NRC has determined that three Severity Level IV violations of NRC requirements occurred. These violations were evaluated in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at [www.nrc.gov](http://www.nrc.gov); select **What We Do, Enforcement**, then **Enforcement Policy**. The violations involved the failure to: (1) confine your possession and use of licensed material to the locations listed on your license, (2) periodically audit your radiation protection program, and (3) use a minimum of two independent physical controls to secure portable gauges from unauthorized removal when the portable gauges are not under your control and constant surveillance. The first violation is of particular concern because it is a repeat violation from our previous inspection conducted on March 19, 2001. It appears that the corrective actions outlined in your letter dated April 24, 2001, were not adequate to prevent recurrence. This repeat violation and the other two violations are cited in the enclosed Notice of Violation (Notice). The violations are being cited in the Notice because they were identified by the NRC during the inspection, rather than being self-identified by the licensee.

The violation of 10 CFR 30.34(i) identified during this inspection and described in the attached Notice is normally categorized at Severity Level III and considered for escalated enforcement action. However, because (1) one physical control existed to prevent loss or theft of the portable gauge, (2) you retained possession of the gauge, (3) you took appropriate action to correct the violation and prevent recurrence of similar violations in the future, and (4) the

violation was not willful, we are exercising enforcement discretion to categorize this violation at Severity Level IV (EA-06-197). Any future violations of 10 CFR 30.34(l) will be categorized at Severity Level III and evaluated for a civil penalty in accordance with Section VI.C. of the Enforcement Policy.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. For your consideration and convenience, an excerpt from NRC Information Notice 96-28, "SUGGESTED GUIDANCE RELATING TO DEVELOPMENT AND IMPLEMENTATION OF CORRECTIVE ACTION," is enclosed. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and 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, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction.

Should you have any questions concerning this inspection or the enclosed Notice, please contact Ms. Christi Maier at 817-860-8217 or the undersigned at 817-860-8287.

Sincerely,

/RA/

Vivian H. Campbell, Chief  
Nuclear Materials Inspection Branch

Docket No.: 030-32248  
License No.: 11-27091-01

Enclosures:

1. Notice of Violation
2. NRC Information Notice 96-28

cc w/Enclosure 1:  
Idaho Radiation Control Program Director

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## NOTICE OF VIOLATION

Forsgren Associates, Inc.  
Rexburg, Idaho

Docket No. 030-32248  
License No. 11-27091-01  
EA-06-197

During an NRC inspection conducted on June 22, 2006, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 30.34(c) requires, in part, that the licensee confine his possession and use of byproduct material to the locations authorized in the license.

License Condition 10 of NRC Materials License 11-27091-01 states, in part, that radioactive material may be used or stored at the licensee's facilities located at Rexburg, Idaho, and at temporary job sites anywhere in the United States where the U.S. Nuclear Regulatory Commission maintains jurisdiction.

Contrary to the above, the licensee has not confined its possession and use of byproduct material to those locations authorized in the license. Specifically, as of January 2004, the licensee has maintained a location of use and storage of radioactive material in Evanston, Wyoming, and this location is not authorized by NRC Materials License 11-27091-01.

This is a repeat violation.

This is a Severity Level IV violation (Supplement VI).

- B. 10 CFR 20.1101(c), requires that the licensee shall periodically (at least annually) review the radiation protection program content and implementation.

Contrary to the above, the licensee failed to periodically (at least annually) review the content and implementation of the radiation protection program. Specifically, the licensee failed to review the radiation protection program content and implementation between calendar years 2002 and 2005, a period greater than one year.

This is a Severity Level IV violation (Supplement IV).

- C. 10 CFR 30.34(i) requires, in part, that each licensee use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

Contrary to the above, the licensee failed to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee. Specifically, between July 11, 2005, and June 22, 2006, the licensee used only one independent physical control that formed a tangible barrier to secure a portable gauge from unauthorized removal, whenever the portable gauge was in the bed of the transport vehicle and not under the licensee's control and constant surveillance.

This is a Severity Level IV violation (Supplement VI).

ENCLOSURE 1

Pursuant to the provisions of 10 CFR 2.201, Forsgren Associates, Inc., is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region IV, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; EA-06-197" and should include for each 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 to avoid further violations, 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.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

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.

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

Dated this 25<sup>th</sup> day of August 2006