



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
612 EAST LAMAR BLVD, SUITE 400
ARLINGTON, TEXAS 76011-4125

September 16, 2011

EA-11-132

Mr. Richard Noll, CEO
Forsgren Associates, Inc.
370 East 500 South, Suite 200
Salt Lake City, Utah 84111

SUBJECT: NRC INSPECTION REPORT 030-32248/2011-001 AND NOTICE OF VIOLATION

Dear Mr. Noll:

This refers to the routine, unannounced inspection conducted at the Forsgren Associates, Inc., facility located in Rexburg, Idaho, on April 15, 2011, with continued in-office review through June 23, 2011. This inspection examined activities conducted under your license as they relate to radiation safety and security, to compliance with the Commission's rules and regulations, and the conditions of your license. Within these areas, the inspection consisted of a selected examination of procedures and representative records, observations of activities, and interviews with personnel. The inspector discussed the preliminary inspection findings with your radiation safety officer, Mr. William W. McNaughton, and your district manager, Mr. Brent Crowther, at the conclusion of the on-site portion of the inspection. A final exit briefing was conducted telephonically with you and other members of your staff on June 23, 2011. An inspection report identifying the apparent violations was issued on June 28, 2011 (ML111791764).

On August 3, 2011, a Predecisional Enforcement Conference was conducted in the Region IV office to discuss the apparent violations, their significance, their root causes, and your corrective actions. During the Predecisional Enforcement Conference, we discussed the apparent violations identified in the subject inspection report, and you acknowledged that your radiation safety program had not received the time and attention that was needed to ensure compliance with NRC requirements. You agreed that the violations occurred, and described corrective actions that you took and plan to take to provide more management oversight over the radiation safety program, as discussed below.

Based on the information developed during the inspection, and the information you presented during the conference, the NRC has determined that four violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the Notice.

The first violation is the most significant, and involved the failure to use two independent physical controls to secure a portable nuclear gauge while in storage. Specifically, five portable nuclear gauges were in a storage room in the lower level of the building with only one lock to provide a tangible barrier to secure the portable nuclear gauges from unauthorized removal. The NRC considers this violation significant because this security requirement provides a

reasonable assurance that licensed material stored in controlled or unrestricted areas will be secured from unauthorized access or theft. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III. The NRC's Enforcement Policy may be found on the NRC's website at www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html.

In accordance with the NRC's Enforcement Policy, a base civil penalty of \$3,500 is considered for a Severity Level III violation. Because your facility has not been the subject of escalated enforcement actions within the last two inspections, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy. Based on your prompt and comprehensive corrective actions, the NRC has determined that *Corrective Action* credit is warranted. Your immediate corrective actions included securing the portable gauges with two independent physical controls, and promptly retraining authorized gauge users regarding the security policies and procedures.

During the conference, you stated that you were taking several long-term actions to ensure additional management oversight over the radiation safety program. These actions include selecting a new radiation safety officer who would be attending specific training for his duties, having the division manager perform quarterly audits of the program and of nuclear gauge security, and reviewing the quarterly audits with you to oversee the program. Your staff documented the corrective actions in a letter dated August 17, 2011 (ML11235A830).

Therefore, to encourage prompt and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. In addition, issuance of this Severity Level III violation constitutes escalated enforcement action that may subject you to increased inspection effort. The NRC also includes significant enforcement actions on its website at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions>).

The NRC has categorized the remaining three violations at Severity Level IV. These violations involved failures to: (1) perform (at least annually) a review of the radiation protection program; (2) conduct physical inventories of sealed sources every 6 months; and (3) to test sealed sources for leakage annually. The violations are cited in the enclosed Notice because, rather than being identified by the licensee, the violations were identified by the NRC.

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 a letter from Forsgren Associates, Inc., dated August 17, 2011 (ML11235A830). Therefore, you are not required to respond to this letter unless the description herein 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.

Mr. Richard Noll

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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>.

Should you have any questions regarding this letter or the enclosed report, please contact Mr. Michael Vasquez, Chief, Nuclear Materials Safety Branch A, at 817-860-8130.

Sincerely,

/RA/

Elmo E. Collins
Regional Administrator

Docket: 030-32248
License: 11-27091-01

Enclosure:
Notice of Violation (Notice)

cc w/Enclosure 1:
Mark Dietrich, Administrator
Technical Services Division
Idaho Department of Environmental Quality
1410 North Hilton
Boise, Idaho 83706

Brent Crowther, District Manager
Forsgren Associates, Inc.
350 North 2nd Street
Rexburg, Idaho 83440

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| ADAMS | <input type="checkbox"/> No | <input checked="" type="checkbox"/> Yes | <input checked="" type="checkbox"/> SUNSI Review Complete | | Reviewer Initials: MMH |
| <input checked="" type="checkbox"/> Publicly Available | | <input type="checkbox"/> Non-publicly Available | | <input type="checkbox"/> Sensitive | <input checked="" type="checkbox"/> Non-sensitive |
| Category – | | KEYWORD: EA-11-132 NOV for Forsgren Associates, Inc. | | | |
| RIV:DNMS:NMSB-B | DNMS:NMSB-A | DNMS:SMA | ACES | RC | |
| MMHammond | GMVasquez | CCain | RKellar | KSFuller | |
| /RA/ | /RA/ JLT for | /RA/ | /RA/ | | |
| 09/12/2011 | 09/12/2011 | 09/13/2011 | 09/13/2011 | 09/ /2011 | |
| D:DNMS | DRA | RA | | | |
| RJCaniano | ATHowell | EECollins | | | |
| /RA/ VC for | /RA/ RJC for | /RA/ RJC for | | | |
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NOTICE OF VIOLATION

Forsgren Associates, Inc.
Rexburg, Idaho

Docket: 030-32248
License: 11-27091-01
EA-11-132

During an NRC inspection conducted on April 15, 2011, four violations of NRC requirements were identified. In accordance with the NRC's Enforcement Policy, the violations are listed below:

- A. 10 CFR 30.34(i) requires that each portable gauge licensee shall 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, on April 15, 2011, the licensee failed to use a minimum of two 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, the licensee stored five portable gauges in a storage room in the lower level of the building with only one lock to provide a tangible barrier to secure the portable gauges from unauthorized removal, and the gauges were not under the control and constant surveillance of the licensee. This was a repeat violation from the last inspection.

This is a Severity Level III violation (Section 6.3).

- 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, from June 22, 2006 until April 15, 2011, the licensee failed to periodically (at least annually) review the radiation protection program content and implementation. Specifically, the licensee had not reviewed the radiation protection program content and implementation since the previous inspection conducted on June 22, 2006, a period in excess of the annual requirement. This was a repeat violation from the last inspection.

This is a Severity Level IV violation (Section 6.7).

- C. Condition 15 of NRC License 11-27091-01 requires, in part, that the licensee shall conduct a physical inventory every 6 months to account for all sealed sources and/or devices received and possessed under the license.

Contrary to the above, from June 22, 2006 until April 15, 2011, the licensee failed to conduct a physical inventory every 6 months to account for all sealed sources and/or devices received and possessed under the license. Specifically, during various periods since the previous inspection conducted on June 22, 2006, the licensee had failed to perform physical inventories on at least one nuclear gauge (device), which was a period in excess of 6 months.

This is a Severity Level IV violation (Section 6.7).

- D. Condition 13.A of NRC License 11-27091-01 requires that sealed sources shall be tested for leakage and/or contamination at intervals not to exceed the intervals specified in the certificate of registration issued by the U.S. Nuclear Regulatory Commission under 10 CFR 32.210 or by an Agreement State.

The Registry of Radioactive Sealed Sources and Devices certificate of registration for the Troxler Model 3400 series portable gauge (NC-646-D-130-S issued April 4, 2007) requires leak tests to be performed on sealed sources at an interval not to exceed 12 months.

Contrary to the above, from April 2007 until June 2010, the licensee failed to test sealed sources for leakage and/or contamination at intervals not to exceed the intervals specified in the certificate of registration issued by the U.S. Nuclear Regulatory Commission under 10 CFR 32.210 or by an Agreement State. Specifically, leak tests records for the Troxler Model 3400 series portable nuclear gauges were provided for tests conducted April 2007, February 2009, June 2010, a frequency exceeding a 12-month interval.

This is a Severity Level IV violation (Section 6.7).

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 your letter dated August 17, 2011(ADAMS ML11235A830). However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation," EA 11-132, 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, Region IV, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

If you choose to respond, 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, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

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

Dated this 16th day of September 2011