



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

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

February 1, 2016

Docket No. 03037094  
EA-15-205

License No. 52-31107-01

Fernando Cortés Castro  
EHS Manager  
Ferrovia Agroman, S.A.  
1250 Ponce de Leon Avenue  
San Jose Building Suite 907  
San Juan, PR 00907

SUBJECT: FERROVIAL AGROMAN, S.A. NOTICE OF VIOLATION - NRC INSPECTION  
REPORT NO. 03037094/2015001

Dear Mr. Cortés:

This letter provides you the NRC enforcement decision for apparent violations identified during the NRC reactive inspection conducted on July 30, 2015, with continued in-office review through November 12, 2015, of activities conducted by Ferrovia Agroman, S.A. located in San Juan, Puerto Rico (PR). The inspection reviewed the circumstances surrounding the theft of a portable moisture density gauge containing sealed radioactive sources of cesium-137 (8 millicuries) and americium-241 (40 millicuries) on April 28, 2015. A Ferrovia Agroman portable gauge authorized user (AU) had transported the gauge to a temporary job site in Rio Piedras, PR and temporarily left the vehicle (a pickup truck) unattended with the keys in the ignition and the gauge secured in the truck bed. While the AU was away from the vehicle, an unauthorized individual drove away with it. The vehicle was recovered the following day, but its contents (including the gauge), had been removed.

Blake Welling, Chief, NRC Region I Commercial, Industrial, R&D, and Academic Branch, discussed the apparent violations during a telephonic exit meeting with you on November 12, 2015. The apparent violations were also described in the NRC inspection report sent to you by a letter dated December 10, 2015 (ML15344A505<sup>1</sup>).

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

---

<sup>1</sup> 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.

In the December 10, 2015, letter transmitting the inspection report, we provided you an opportunity to address the apparent violations by either attending a pre-decisional enforcement conference (PEC) or by providing a written response before we made our final enforcement decision. In the letter, we also informed you that we had sufficient information regarding the apparent violations and Ferrovia Agroman's corrective actions to make an enforcement decision without the need for a PEC or a written response from you. In a telephone call on December 14, 2015, you informed Mr. Welling that Ferrovia Agroman neither required a PEC nor intended to send a written response.

Based on the information developed during the inspection, the NRC has determined that two 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 subject inspection report.

The violations involved Ferrovia Agroman's failures to: (1) control and maintain constant surveillance of the gauge containing the radioactive sources; and (2) use two independent physical controls that form tangible barriers to secure the gauge from unauthorized removal. Specifically, the gauge had been secured in the bed of the pickup truck with two independent physical controls. However, the AU left both the keys to the truck and to the gauge locks in the unlocked truck while he was away from the vehicle. This rendered the physical controls to the gauge ineffective. Further, the AU acknowledged that the gauge was not in his direct line of sight while he was away from the truck.

The failure to utilize proper security measures to control the gauge resulted in the theft of the truck with the gauge inside and the removal of the gauge from the truck bed. Because the licensed material has not been recovered, the potential still exists for significant exposure to occur if the gauge transport container is breached. Therefore, these violations have been categorized in accordance with the NRC Enforcement Policy at Severity Level (SL) III. In consideration of the interrelationship between the two violations, the NRC has cited them together as a single SL III violation.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$3,500 is considered for a SL III problem. Because your facility has not been the subject of escalated enforcement action within either the last two years or the two most recent 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. The NRC has concluded that credit is warranted for Ferrovia Agroman's corrective actions taken to address the violation. Specifically, Ferrovia Agroman: (1) immediately contacted the police, the NRC, and Homeland Security and posted information about the missing gauge in the local newspaper; (2) re-trained all AUs on the company policies for maintaining control and constant surveillance of radioactive material in transport vehicles; and (3) added specific instructions to the company Operating and Emergency Procedures regarding transport vehicle key control.

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. Issuance of this SL III violation constitutes an escalated enforcement action that may subject you to increased inspection effort. Additionally, significant violations in the future could result in a civil penalty.

The NRC has concluded that information regarding: (1) the reason for the violation; (2) the actions planned or already taken to correct the violation and prevent recurrence; and, (3) the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 03037094/2015001 and in this letter. 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/

Daniel H. Dorman  
Regional Administrator

Enclosure:  
Notice of Violation

cc w/enclosure:  
Commonwealth of Puerto Rico

The NRC has concluded that information regarding: (1) the reason for the violation; (2) the actions planned or already taken to correct the violation and prevent recurrence; and, (3) the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 03037094/2015001 and in this letter. 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/

Daniel H. Dorman  
Regional Administrator

Enclosure:

Notice of Violation

cc w/enclosure:

Commonwealth of Puerto Rico

Distribution: see next page

ML16029A326

DOCUMENT NAME: S:\Enf-all\Enforcement\Proposed-Actions\Region1\Ferrovia Agroman stolen unattended gauge NOV-III EA-15-205.docx

|                 |                         |                                |               |  |                 |
|-----------------|-------------------------|--------------------------------|---------------|--|-----------------|
| X SUNSI Review/ |                         | X Non-Sensitive<br>□ Sensitive |               | X Publicly Available<br>□ Non-Publicly Available |                 |
| OFFICE          | RI/ORA                  | RI/DNMS                        | RI/DNMS       | RI/ORA   | RI/ORA          |
| NAME            | M McLaughlin/ MMM*      | B Welling/ BDW*                | J Trapp/ JMT* | B Klukan/ BMK*                                   | B Bickett/ BAB* |
| DATE            | 1/22/16                 | 1/22/16                        | 1/26/16       | 1/27/16  | 1/27/16         |
| OFFICE          | OE                      | RI/RA                          |               |  |                 |
| NAME            | L Sreenivas via email** | DDorman                        |               |  |                 |
| DATE            | 1/28/16                 | 1/29/16                        |               |  |                 |

\* See previous concurrence page

\*\*OE Quick Review

Letter to Fernando Cortés Castro from Daniel Dorman dated February 1, 2016

DISTRIBUTION w/encl:

|  |                     |
|--|---------------------|
| ADAMS (PARS)   |                     |
| SECY   | RIDSSECYMAILCENTER  |
| OEMAIL   |                     |
| OEWEB  |                     |
| V McCree, EDO  | RIDSEDOMAILCENTER   |
| G Tracy, DEDM  |                     |
| K MorganButler, OEDO                                 |                     |
| P Holahan, OE  | RIDSOEMAILCENTER    |
| B Sosa, OE   |                     |
| N Hilton, OE   |                     |
| N Hasan, OE  |                     |
| S Rodriguez, OE                                      |                     |
| L Sreenivas, OE                                      |                     |
| S Moore, NMSS  | RIDSNMSSOD RESOURCE |
| D Collins, NMSS                                      |                     |
| M Lombard, NMSS                                      |                     |
| P Henderson, NMSS                                    |                     |
| M Burgess, NMSS                                      |                     |
| R Sun, NMSS  |                     |
| Enforcement Coordinators                             |                     |
| RII, RIII, RIV (D Gamberoni; R Skokowski; J Rollins) |                     |
| C Scott, OGC   | RIDSOGCMAILCENTER   |
| H Harrington, OPA                                    | RIDSOPAMAILCENTER   |
| H Bell, OIG  | RIDSOIGMAILCENTER   |
| C McCrary, OI  | RIDSOIMAILCENTER    |
| D D'Abate, OCFO                                      | RIDSOCFOMAILCENTER  |
| G Weindling, OCFO                                    |                     |
| J Trapp, DNMS, RI                                    | R1DNMSMAILRESOURCE  |
| J Nick, DNMS, RI                                     |                     |
| B Welling, DNMS                                      |                     |
| C Cahill, DNMS                                       |                     |
| D Screnci, PAO-RI / N Sheehan, PAO-RI                |                     |
| D Janda, SAO-RI / M Ford, SAO-RI                     |                     |
| B Klukan, RI   |                     |
| B Bickett, RI  |                     |
| M McLaughlin, RI                                     |                     |
| S Galbreath, RI                                      |                     |
| D Bearde, RI   |                     |
| S Villar, RI   |                     |
| Region I OE Files (with concurrences)                |                     |

## NOTICE OF VIOLATION

Ferrovial Agroman, S.A.  
San Juan, Puerto Rico

Docket No. 03037094  
License No. 52-31107-01  
EA-15-205

During an NRC inspection conducted between July 30, 2015, and November 12, 2015, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 20.1802 requires that the licensee shall control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

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 28, 2015, Ferrovia Agroman, S.A. did not control and maintain constant surveillance of or use a minimum of two independent physical controls that form tangible barriers to secure from unauthorized removal, licensed material in a portable gauge that was in a controlled or unrestricted area and that was not in storage. Specifically, a gauge containing licensed material was left unattended and uncontrolled in the back of a pickup truck at a temporary jobsite. Additionally, while the gauge was left unattended, it was secured to the truck with two independent controls; however, the keys to both the vehicle and the gauge locks were left in the unlocked truck, which was stolen from the jobsite. Although the truck was recovered the following day, the gauge was not located.

This is a SL III violation (Enforcement Policy Sections 6.3 and 6.7).

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 Inspection Report No. 03037094/2015001. 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-15-205)" 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, U.S., Nuclear Regulatory Commission, Region I, 2100 Renaissance Boulevard, King of Prussia, PA 19406, 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 in the NRC's Agencywide Documents Access and Management 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 1<sup>st</sup> day of February, 2016