



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

October 18, 2006

Edmund J. Jacobsen, P.E., RSO  
Aaron Swan and Associates  
301 West Capital Avenue  
Pierre, South Dakota 57501

SUBJECT: NRC INSPECTION REPORT 030-33482/06-001 AND NOTICE OF VIOLATION

Dear Mr. Jacobsen:

This refers to the inspection conducted September 12, 2006, through October 16, 2006, of your facility in Pierre, South Dakota. 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 and interviews with personnel. Preliminary inspection findings were discussed with you and Mr. Steve McCarty at the conclusion of the onsite portion of the inspection. The licensee required additional time to review records and determine if all required tests had been conducted. Therefore, the inspection results were discussed with Mr. McCarty during a final telephonic exit briefing conducted on October 16, 2006.

Based on the results of this inspection, the NRC has determined that a Severity Level IV violation of NRC requirements occurred. The violation was evaluated in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600. 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 violation identified during the inspection is cited in the enclosed Notice of Violation (Notice) and involved the failure to test sealed sources for leakage and/or contamination as required by your license. This violation is being cited in the Notice because it was identified by the NRC, rather than being self-identified by the licensee.

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 Christi Maier at (817) 860-8217 or Vivian H. Campbell at (817) 860-8287.

Sincerely,

***/RA AD Gaines for/***

Vivian H. Campbell, Chief  
Nuclear Materials Inspection Branch

Docket No.: 030-33482  
License No.: 40-27491-01

Enclosures:

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

cc w/Enclosure 1:  
South Dakota Radiation Control Program Director

bcc w/enclosure (via ADAMS e-mail distribution):

LDWert

CLCain

VHCampbell

JEWhitten

MCMaier

RITS Coordinator

NMIB

RIV Materials Docket File - 5<sup>th</sup> floor

SUNSI Review Completed: MCM1 ADAMS:  Yes  No Initials: MCM1

Publicly Available  Non-Publicly Available  Sensitive  Non-Sensitive

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10/18/2006	10/18/2006

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## NOTICE OF VIOLATION

Aaron Swan and Associates  
Pierre, South Dakota

Docket No. 030-33482  
License No. 40-27491-01

During an NRC inspection conducted September 12, 2006, through October 16, 2006, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violation is listed below:

License Condition 14 of Materials License 40-27491-01 issued to Aaron Swan and Associates states, in part, 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.

Sealed Source and Device Registry No. NC-646-D-130-S for Troxler Electronic Laboratories (Troxler) Portable Surface Moisture and Density Gauge Model 3400 Series, dated December 28, 2001 (effective through June 11, 2006), indicates that sealed sources shall be tested for leakage and/or contamination at intervals not to exceed 6 months.

Contrary to the above, the licensee failed to test the sealed sources used in their Troxler Model 3400 Series portable gauges for leakage and/or contamination at intervals not to exceed 6 months. Specifically, between February 2003 and September 2006, the licensee leak tested sealed sources used in 3 Troxler Model 3430 portable gauges and 1 Troxler Model 3440 portable gauge in August 2003, September 2004, April 2005, and January 2006, intervals greater than 6 months.

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

Pursuant to the provisions of 10 CFR 2.201, Aaron Swan and Associates 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" 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 18<sup>th</sup> day of October 2006.