

July 19, 2010

EA-10-110

Michael Varner, P.E.  
Vice President  
Southern Earth Sciences, Inc.  
1438 Balboa Avenue  
Panama City, FL 32401

SUBJECT: NOTICE OF VIOLATION - NRC Inspection Report No. 15000009/2010001

Dear Mr. Varner:

This refers to the inspection conducted between April 26 and May 19, 2010, at the Southern Earth Sciences, Inc. (SES) office in Panama City, Florida, as well as at SES field sites located at Tyndall Air Force Base and the Naval Surface Warfare Center in Panama City, Florida. The purpose of the inspection was to examine general licensed activities as they relate to radiation safety and compliance with the Commission's regulations. Information provided in a telephone conversation on May 4, 2010, between the NRC inspector and Mr. Richard Conroy of your organization was also reviewed as a part of this inspection. The findings of the inspection were discussed with you and Mr. Conroy by telephone during an exit meeting on May 19, 2010. The NRC sent you a letter dated June 14, 2010, which enclosed the referenced inspection report.

The June 14, 2010, letter stated that the NRC was considering escalated enforcement for an apparent violation involving the failure of SES, holder of a specific Florida Agreement State License, to file an NRC Form 241 at least three days prior to engaging in licensed activities in an area of exclusive federal jurisdiction within an Agreement State, as required by 10 CFR 150.20(b). Specifically, for an indeterminate number of instances between January 2008 and April 2009, SES conducted nuclear density testing, a licensed activity, within NRC jurisdiction at Tyndall Air Force Base and the Naval Surface Warfare Center, both located in Florida, without obtaining a specific NRC license or filing an NRC Form 241.

During the final exit conducted by telephone on May 19, 2010, you were informed that the NRC was considering escalated enforcement for the apparent violation. You were also informed that we had sufficient information regarding the apparent violation and your corrective actions to make an enforcement decision without the need for a predecisional enforcement conference (PEC) or a written response from SES. You indicated that a PEC would not be necessary, and that SES did not plan to submit a written response.

Therefore, based on the information developed during the inspection, the NRC has concluded that the violation occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in the subject inspection report issued on June 14, 2010. The NRC determined that SES management had been unaware that Tyndall Air Force Base and the Naval Surface Warfare Center are areas of federal jurisdiction that required SES to have received NRC authorization to conduct licensed activities. SES became aware of this requirement in April 2009, after a representative of the Army Corps of Engineers at

Tyndall Air Force base requested proof of the SES license to work at a jobsite in exclusive federal jurisdiction. As a result, SES immediately ceased licensed activity in the area of exclusive federal jurisdiction and, on May 15, 2009, appropriately filed for reciprocity for that work. However, between January 2008 and April 2009, as described to the NRC by representatives of SES and military representatives of both Tyndall Air Force Base and the Naval Surface Warfare Center, SES conducted nuclear density testing an indeterminate number of times in areas of exclusive federal jurisdiction without filing for reciprocity. This violation impacted the NRC's regulatory process because the NRC was not provided an opportunity to conduct inspections of licensed activities since the NRC was not informed that portable gauges were being used at these locations. In accordance with the NRC Enforcement Policy, the NRC has categorized this violation at Severity Level (SL) III.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$ 3,500 is considered for a SL III violation. Because your facility has not been the subject of escalated enforcement actions within the last two years or the last two inspections, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. The NRC has concluded that credit is warranted for your corrective actions taken to address the violation, which include: (1) SES immediately ceased conducting licensed activities in areas of exclusive federal jurisdiction upon being informed of the requirement to file for reciprocity to perform this work; (2) SES subsequently filed for reciprocity by filing an NRC Form 241 prior to conducting licensed activities in areas of exclusive federal jurisdiction from May 15, 2009 until December 31, 2009; and, (3) SES, as of January 1, 2010, ceased the use of licensed material in areas of exclusive federal jurisdiction and began using alternate testing methods that do not require an NRC license or filing for reciprocity. Accordingly, the NRC confirmed during the subject inspection that SES had not used licensed materials at Tyndall Air Force Base or the Naval Surface Warfare Center, since December 31, 2009.

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 SL III violation constitutes escalated enforcement action that may subject you to increased inspection effort should you decide to reapply for reciprocity or for a specific NRC license in the future.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken to correct the violation and prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in this letter and in Inspection Report No. 15000009/2010001. 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 enclosure, 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, 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/ Original Signed by: David C. Lew for***

Marc L. Dapas,  
Acting Regional Administrator

Docket No. 150-00009  
License No. FL-3025-1 (Florida)

Enclosure: Notice of Violation

cc w/encl:  
State of Florida

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cc w/encl:  
State of Florida

**SUNSI Review Complete: MMM**

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\*HQ to perform a quick review. \*\* see previous concurrence page

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Enforcement Coordinators

RII, RIII, RIV (C Evans; S Orth; W. Jones)

C. Scott, OGC

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M. Williams, OCFO

S. Titherington-Buda, OCFO

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## NOTICE OF VIOLATION

Southern Earth Sciences, Inc.  
Panama City, Florida

Docket No. 150-00009  
License No. FL-3025-1  
(Florida)  
EA-10-110

During an NRC inspection conducted between April 26 and May 19, 2010, for which an exit meeting was held on May 19, 2010, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 150.20(a) states, in part, that any person who holds a specific license from an Agreement State is granted an NRC general license to conduct the same activity in areas of exclusive federal jurisdiction within 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 areas of exclusive federal jurisdiction within Agreement States shall, at least three days before engaging in each such activity, file four copies of NRC Form-241, "Report of Proposed Activities in Non-Agreement States," with the Regional Administrator of the appropriate NRC regional office.

Contrary to the above, between January 2008 and April 2009, Southern Earth Sciences, Inc. (SES), a holder of a Florida (Agreement State) license, stored or used portable gauges containing cesium-137 and americium-241 sealed sources, at Tyndall Air Force Base and the Naval Surface Warfare Center, areas of exclusive federal jurisdiction within the State of Florida, without a specific license issued by the NRC, and SES did not file Form-241 "Report of Proposed Activities in Non-Agreement States," with the Regional Administrator of the appropriate NRC regional office.

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

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. 15000009/2010001, and, in the letter transmitting this Notice of Violation (Notice). 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-10-110," 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 I, within 30 days of the date of the letter transmitting this 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 July 19th day of July 2010

Enclosure