



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

June 28, 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 NO. 030-32248/2011-001

Dear Mr. Noll:

This refers to the routine, unannounced inspection conducted on April 15, 2011, at the Forsgren Associates, Inc. facility located in Rexburg, Idaho, with continued in-office review through June 23, 2011. During this inspection, the NRC staff examined activities conducted under your license as they relate to safety and security, and to confirm compliance with the Commission's rules and regulations, and with 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 District Manager, Mr. Brent Crowther, of your staff 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. The enclosed report presents the results of this inspection.

Based on the results of this inspection, four apparent violations were identified and are being considered for escalated enforcement in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html. The apparent violations involved failures: (1) to secure the portable gauge using two independent physical controls to prevent unauthorized removal, while in storage; (2) to perform (at least annually) a review of the radiation protection program; (3) to conduct physical inventories of sealed sources every 6 months; and (4) to test sealed sources for leakage annually. Apparent violations (1) and (2) were also identified during the NRC's previous inspection, and it appears you did not correct the violations. Since the NRC has not made a final determination in this matter, a Notice of Violation is not being issued for these inspection findings at this time. In addition, please be advised that the number and characterization of apparent violations described in the enclosed inspection report may change as a result of further NRC review.

Based on these inspections findings, the NRC is concerned that your radiation safety program has not received adequate management attention. It was noted during the inspection that Forsgren's Radiation Safety Officer may not have had sufficient time to dedicate to the implementation of the radiation safety program. NRC expects licensees to conduct their programs with meticulous attention to detail and a high standard of compliance. NRC holds management responsible to provide the necessary oversight to ensure NRC requirements are being met, and that violations are corrected.

During our telephonic exit briefing on June 23, 2011, we informed you that NRC planned to conduct a predecisional enforcement conference (PEC) to discuss these apparent violations. Please contact Mr. Michael Vasquez at 817-860-8130 within 7 days of the date of this letter to schedule the PEC, which should be conducted within 30 days of the date of this letter. This conference may be conducted telephonically and will be open to public observation in accordance with Section V of the NRC Enforcement Policy.

The decision to hold a predecisional enforcement conference does not mean that the NRC has determined that a violation has occurred or that enforcement action will be taken. This conference is being held to obtain information to assist the NRC in making an enforcement decision. This may include information to determine whether a violation occurred, information to determine the significance of a violation, information related to the identification of a violation, and information related to any corrective actions taken or planned to be taken. The conference will provide an opportunity for you to provide your perspective on these matters and any other information that you believe the NRC should take into consideration in making an enforcement decision. In presenting your corrective actions, you should be aware that the promptness and comprehensiveness of your actions will be considered in assessing any civil penalty for the apparent violations. The guidance in the enclosed excerpt from NRC Information Notice 96-28, "Suggested Guidance Relating to Development and Implementation of Corrective Action," may be helpful.

You will be advised by separate correspondence of the results of our deliberations on this matter. No response regarding these apparent violations is required at this time.

In accordance with 10 CFR 2.390 of the NRC's Rules of Practice, a copy of this letter, its enclosures, and your response, if you decide 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's 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).

Forsgren Associates, Inc.
EA-11-132

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

Sincerely,

/RA/

Roy J. Caniano, Director
Division of Nuclear Materials Safety

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

Enclosures:

1. NRC Inspection Report 030-32248/2011-001
2. NRC Information Notice 96-28

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.
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Rexburg, Idaho 83440

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ADAMS	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes	X SUNSI Review Complete	Reviewer Initials: MMH
<input checked="" type="checkbox"/> Publicly Available	<input type="checkbox"/> Nonpublicly Available	<input type="checkbox"/> Sensitive	<input checked="" type="checkbox"/> Nonsensitive	
EA-11-132 PEC Letter				
RIV:DNMS/NMSB-B	RIV:DNMS	C:NMSB-A	ACES	D:DNMS
MMHammond	CCain	MVasquez	RLKellar	RJCaniano
/RA/	/RA MH for/	/RA/	/RA/	/RA/
6/17/11	6/17/11	6/22/11	6/27/11	6/27/11

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U.S. NUCLEAR REGULATORY COMMISSION
REGION IV

Docket: 030-32248
License: 11-27091-01
Report: 030-32248/2011-001
EA: EA-11-132
Licensee: Forsgren Associates, Inc.
Location: 350 North 2nd Street
Dates: April 15, 2011 through June 23, 2011
Inspector: Michelle M. Hammond, M.Sc., Health Physicist
Nuclear Materials Safety Branch B
Approved By: Michael Vasquez, Chief
Nuclear Materials Safety Branch A
Attachment: Supplemental Inspection Information

ENCLOSURE 1

EXECUTIVE SUMMARY

Forsgren Associates, Inc.
NRC Inspection Report 030-32248/11-001

This was a routine, unannounced inspection of licensed activities involving the use and storage of byproduct material in portable nuclear gauges at the licensee's facility located in Rexburg, Idaho. The inspection was an examination of activities conducted under NRC Materials License 11-27091-01, as they relate to radiation safety and security and to compliance with the Commission's rules and regulations, as well as 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. This report describes the findings of the inspection.

Program Overview

Forsgren Associates, Inc. is authorized to possess and use byproduct material (cesium-137 and americium-241) in the operation of six portable moisture density gauges within areas of NRC jurisdiction, including temporary jobsites. The use of portable moisture density gauges is seasonal due to weather conditions. The licensee uses the gauge for soil testing related to environmental projects. (Section 1)

Inspection Findings

The licensee failed to secure the portable gauge using two independent physical controls to prevent unauthorized removal, while in storage at the licensee's permanent storage facility in Rexburg, Idaho. This was identified as an apparent violation of 10 CFR 30.34(i). (Section 2)

The licensee failed to periodically (at least annually) review the radiation protection program content and implementation. This was identified as an apparent violation of 10 CFR 20.1101(c). (Section 2)

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. This was identified as an apparent violation of License Condition 15 of NRC License 11-27091-01. (Section 2)

The licensee failed to test the sealed sources contained in the portable gauge for leakage or contamination on an annual basis. This was identified as an apparent violation of License Condition 13.A of NRC License 11-27091-01. (Section 2)

Licensee Corrective Actions

The licensee's immediate corrective actions included:

- The licensee took immediate corrective action by placing the gauges inside a locked storage closet within a locked storage room, which would meet the requirements of 10 CFR 30.34(i)
- The licensee developed an audit program and completed an audit on May 13, 2011.
- The licensee has implemented a calendar with annual audit due dates.
- The licensee developed an official inventory sheet with the required information and completed an inventory on April 15, 2011.
- The licensee performed leak tests on all 6 gauges between May 17 and June 7, 2011. No leakage or contamination was detected.

Report Details

1 Program Overview (87124)

1.1 Inspection Scope

The inspector reviewed the license and supporting documentation, interviewed licensee personnel, and examined the storage location at the licensed facility. Collectively, these documents described the licensee's implementation of its radiation safety program. The previous inspection conducted on June 22, 2006 resulted in three severity level IV violations. The inspector determined that two of the previous violations could not be closed during the inspection because two violations from the previous inspection still existed.

1.2 Observations and Findings

Forsgren Associates, Inc. is authorized under NRC License 11-27091-01 to use and possess byproduct material in portable moisture density gauges. Licensed activities are conducted in the Rexburg, Idaho and Evanston, Wyoming areas. At the time of the inspection, the licensee had six portable moisture density gauges, and employed four authorized users. The gauges are dispatched from the Rexburg, Idaho or Evanston, Wyoming office for work conducted throughout Idaho and Wyoming.

2 Inspection Findings (87124)

2.1 Inspection Scope

The inspector conducted interviews with licensee staff and observed licensed activities at the Rexburg, Idaho location. Licensed activities were examined as they relate to the safety and security of the portable gauges and the licensee's efforts to protect members of the public.

2.2 Observations and Findings

- 10 CFR 30.34(i) requires portable gauge licensees 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.

On April 15, 2011, the licensee did not secure five portable gauges using two independent physical controls to prevent unauthorized removal, while in storage at the licensee's permanent storage facility in Rexburg, Idaho. Specifically, the licensee stored five portable gauges in a storage room in lower level of the building with only one lock to provide a tangible barrier to secure the portable gauges from unauthorized removal. During the inspection, the inspector entered the building through an unlocked back door and then proceeded directly to the room with a radiation posting. No one was present to provide surveillance for the gauges. The gauges were stored in a room that had only one lock on the door that formed a tangible barrier. Upon entering the room, all five gauges were sitting on the floor. This was identified as an apparent violation of 10 CFR 30.34(i). (030-32248/11-001-01). This was a repeat violation from the last inspection.

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

When asked about annual audits of the radiation protection program. The RSO indicated that he had not conducted any audits of the program. He indicated that being the RSO was only one of his job responsibilities and that he was not able to devote much time to the program. The inspector determined that the licensee had not performed any periodic reviews from June 22, 2006 to April 15, 2011. This was identified as an apparent violation of 10 CFR 20.1101(c). (030-32248/11-001-02). This was a repeat violation from the last inspection.

- License Condition 15 of NRC License 11-27091-01 requires that the licensee shall conduct a physical inventory every 6 months, or at intervals approved by the U.S. Nuclear Regulatory Commission, to account for all sealed sources and/or devices received and possessed under the license. An interval different from 6 months has not been requested by the licensee for review and approval by the Commission.

At the time of the inspection on April 15, 2011, the licensee provided documentation indicating that only one physical inventory had been conducted since the last inspection on June 22, 2006. The licensee performed a physical inventory in June 2009. The licensee failed to perform physical inventories at 6 month intervals from June 22, 2006 through June 2009 and from June 2009 until the date of the inspection on April 15, 2011. Consequently, the licensee failed to conduct a physical inventory of the portable gauges at the required frequency of 6 months. This was identified as an apparent violation of License Condition 15 of the NRC License 11-27091-01. (030-32248/11-001-03)

- License 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 safety evaluation sheet specifies an annual leak test frequency for the Troxler Model 3400 series portable gauge possessed by the licensee.

The RSO only provided leak test records for tests conducted April 2007, February 2009, June 2010, and September 2010. A review of the licensee's utilization logs indicated that the portable gauges had been used at temporary job sites during periods in 2007, 2008, 2009, and 2010. This was identified as an apparent violation of License Condition 13A of NRC License 11-27091-01. (030-32248/11-001-04)

2.3 Conclusions

Four apparent violations were identified, which are being considered for escalated enforcement. These apparent violations include failures: (1) to secure portable gauges while in storage at a field office in Rexburg, Idaho, with a minimum of two independent physical controls to form tangible barriers; (2) to conduct annual audits of the radiation protection program; (3) to perform physical inventories of the sealed sources every 6 months; and (4) to perform leak tests of the sealed sources at an annual frequency;

3 Licensee Corrective Actions

During the inspection, the licensee took immediate corrective action by placing the gauges inside a locked storage closet within a locked storage room, which provided the second independent control to form a tangible barrier. The licensee developed an audit program and completed an audit on May 13, 2011. The licensee has implemented a calendar with annual audit due dates. The licensee developed an official inventory sheet with the required information and completed an inventory on April 15, 2011. The licensee performed leak tests on all 6 gauges between May 17, 2011 and June 7, 2011. In addition, the licensee is planning to conduct safety meetings and refresher training to review NRC requirements, policies, and conditions of the license.

4 Exit Meeting Summary

A final telephonic exit briefing was conducted with you and your staff on June 23, 2011, to review the inspection findings as presented in this report. The licensee acknowledged the inspection findings. No proprietary information was identified.

PARTIAL LIST OF PERSONS CONTACTED

Licensee

*Richard Noll, CEO
#*Brent Crowther, District Manager
#*William McNaughton, RSO and gauge user
#*Shiloh Crawford, gauge user
#*Gary Cox, gauge user

#present at entrance meeting
*present at exit meeting (telephonically)

INSPECTION PROCEDURES USED

87124 Portable and Fixed Gauges

ITEMS OPENED, CLOSED, AND DISCUSSED

Opened

030-32248/11-001-01 APV Failure to use two independent physical controls to secure a portable gauge from unauthorized removal while not under the control and constant surveillance of the licensee
030-32248/11-001-02 APV Failure to periodically, at least annually, review the radiation protection program content and implementation
030-32248/11-001-03 APV Failure to conduct physical inventory of the sealed sources
030-32248/11-001-04 APV Failure to conduct leak tests for sealed sources

Closed

None

Discussed

None

LIST OF ACRONYMS USED

APV apparent violation
CFR *Code of Federal Regulations*
NRC Nuclear Regulatory Commission
RSO Radiation Safety Officer