



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION**

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

April 15, 2014

Docket No. 03037094

License No. 52-31107-01

Manuel Sanchez  
Administrator  
Ferrovial Agromán, S.A.  
San Jose Building, Suite 901  
1250 Ponce de León Avenue  
San Juan, PR 00907

**SUBJECT: NRC INSPECTION REPORT NO. 03037094/2014001, FERROVIAL AGROMAN, S.A., SAN JUAN AND PONCE, PUERTO RICO SITES, AND NOTICE OF VIOLATION**

Dear Mr. Sanchez:

On January 29-30, 2014, Dennis Lawyer of this office conducted a safety inspection at Cerretera PR 123, Km 9.7, Bo Masqueyez, Ponce, Puerto Rico and Carretera PR 21 Km 8.0, Terrenos de Antigua Penitnciaria Oso Blanco, San Juan, Puerto Rico of activities authorized by the above listed NRC license. The inspection was an examination of your licensed activities as they relate to radiation safety and to compliance with the Commission's regulations and the license conditions. The inspection consisted of observations by the inspector, interviews with personnel, and a selective examination of representative records. Additional information provided in Mr. Cintron's correspondence dated February 28, March 20, and telephone conversation on April 8, 2014, between Mr. Cintron and Dennis Lawyer of this office was also examined as part of the inspection. The findings of the inspection were discussed with Mr. Cintron of your organization at the conclusion of the inspection.

Based on the results of this inspection and in accordance with the NRC Enforcement Policy, the NRC has determined that five Severity Level IV violations of NRC requirements occurred. The violations involved: 1) the failure to have shipping papers and emergency response information prior to shipping material; 2) the failure to perform hazmat employee training at the required frequency; 3) the failure to perform periodic (at least annualy) program reviews; 4) the failure to perform leak tests on sealed sources: and, 5) the failure to not store material as authorized in the locations stated in License Condition 10.

The violations are cited in the enclosed Notice of Violation (Notice), because the violations were identified by the NRC.

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.

During our inspection exit meeting on April 8, 2014, Mr. Cintron indicated that he has taken corrective actions for these violations and has submitted much of the required information in a letter dated February 28, 2014.

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 document system (ADAMS), accessible from the NRC website 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.

Current NRC regulations and guidance are included on the NRC's website at [www.nrc.gov](http://www.nrc.gov); select **Nuclear Materials; Med, Ind, & Academic Uses**; then **Regulations, Guidance and Communications**. The current Enforcement Policy is included on the NRC's website at [www.nrc.gov](http://www.nrc.gov); select **About NRC, Organizations & Functions; Office of Enforcement; Enforcement documents**; then **Enforcement Policy (Under 'Related Information')**. You may also obtain these documents by contacting the Government Printing Office (GPO) toll-free at 1-866-512-1800. The GPO is open from 8:00 a.m. to 5:30 p.m. EST, Monday through Friday (except Federal holidays).

The NRC's Safety Culture Policy Statement became effective in June 2011. While a policy statement and not a regulation, it sets forth the agency's *expectations* for individuals and organizations to establish and maintain a positive safety culture. You can access the policy statement and supporting material that may benefit your organization on NRC's safety culture Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/safety-culture.html>. We strongly encourage you to review this material and adapt it to your particular needs in order to develop and maintain a positive safety culture as you engage in NRC-regulated activities.

Please contact Dennis Lawyer at 610-337-5366 if you have any questions regarding this matter.

Sincerely,

***Original Signed by Blake Welling***

Blake Welling, Chief  
Commercial, Industrial, R&D and Academic  
Branch  
Division of Nuclear Materials Safety

Enclosures:  
Notice of Violation  
Excerpt from NRC Information Notice 96-28

cc: Noel Cintron Vega, Radiation Safety Officer  
Commonwealth of Puerto Rico

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**Original Signed by Blake Welling**  
 Blake Welling, Chief  
 Commercial, Industrial, R&D and Academic  
 Branch  
 Division of Nuclear Materials Safety

**Enclosures:**

Notice of Violation

Excerpt from NRC Information Notice 96-28

cc: Noel Cintron Vega, Radiation Safety Officer  
 Commonwealth of Puerto Rico

**Distribution:**

B. Bickett, RI

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OFFICE	DNMS/RI	N	DNMS/RI	DNMS/RI		
NAME	DLawyer\dl		BWelling\bw			
DATE	4/11/2014		4/15/14			

## NOTICE OF VIOLATION

Ferrovial Agroman, S.A.  
San Juan, PR

Docket No. 03037094  
License No. 52-31107-01

During an NRC inspection conducted on January 29-30, 2014, five violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 71.5 requires that a licensee who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation in 49 CFR Parts 170 through 189.

49 CFR 172.200(a) requires, with exceptions not applicable here, that each person who offers a hazardous material for transportation shall describe the hazardous material on the shipping paper in the manner required by subpart C of 49 CFR Part 172.

49 CFR 172.600 requires, with exceptions not applicable here, that no person may offer for transportation, accept for transportation, transfer, store, or otherwise handle during transportation, a hazardous material unless emergency response information conforming to Subpart G of 49 CFR Part 172 is immediately available for use at all times the hazardous material is present. 49 CFR 172.602 requires, in part, that the emergency response information must be presented: (1) on a shipping paper; (2) in a document, other than a shipping paper (e.g., a material safety data sheet); or (3) in a separate document (e.g., an emergency response guidance document), in a manner that cross-references the description of the hazardous material on the shipping paper with the emergency response information on the document. Pursuant to 49 CFR 172.101, radioactive material is classified as a hazardous material.

Contrary to the above, on January 23 and 27, 2014, the licensee packaged and transported licensed material over public highways and did not include with the shipment a shipping paper describing the material and did not have the required emergency response information.

This is a Severity Level IV violation (Section 6.8).

- B. 10 CFR 71.5 requires that a licensee who delivers licensed material to a carrier for transport comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation in 49 CFR Parts 170 through 189.

49 CFR 172.704(a) specifies the elements of hazmat employee training as: (1) general awareness/familiarization training, (2) function-specific training, and (3) safety training.

49 CFR 172.704(c) requires, in part, that a hazmat employee receive initial training and recurrent training at least once every three years.

Contrary to the above, the licensee did not provide training for its hazmat employees

which satisfied the requirements in Subpart H to 49 CFR Part 172, in that recurrent training is required every three years, and the licensee otherwise meets the definition of hazmat employer in 49 CFR 171.8.

Specifically, as of January 29, 2014, the licensee last provided training which satisfied the requirements in Subpart H to 40 CFR Part 172 on May 31, 2010, a period greater than three years and had transported gauges on public highways.

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

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

Contrary to the above, the licensee did not periodically (at least annually) review the radiation protection program content and implementation.

Specifically, the licensee last performed a review of the radiation protection program content and implementation on March 18, 2010, a period of greater than annually.

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

- D. License Condition 13.A. of byproduct material license 52-31107-01 requires that sealed sources shall be tested for leakage and/or contamination at intervals not to exceed six months or at the intervals specified in the certificate of registrations issued by the U.S. Nuclear Regulatory Commission under 10 CFR 32.210 or under equivalent regulations of an Agreement State.

Contrary to the above, the licensee did not ensure that sealed sources were tested for leakage and/or contamination at intervals not to exceed six months or at the intervals specified in the certificate of registrations issued by the U.S. Nuclear Regulatory Commission under 10 CFR 32.210 or under equivalent regulations of an Agreement State.

Specifically, the licensee had last performed a test for leakage and/or contamination on September 4, 2010, a period exceeding the 12 month interval as specified in the certificate of registrations issued by the U.S. Nuclear Regulatory Commission under 10 CFR 32.210 or under equivalent regulations of an Agreement State.

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

- E. License Condition 10 of byproduct material license 52-31107-01, requires, in part, that licensed material may be used or stored at the licensee's facilities located in Puerto Rico at Carretera PR 8838, No. 1475, San Juan; Bo. Guszman, Carretera PR 3, Km 24.6, Rio Grande, and Marginal Ponce Bypass No. 2870, Ponce.

Contrary to the above, the licensee was storing licensed material at locations other than Carretera PR 8838, No. 1475, San Juan; Bo. Guszman, Carretera PR 3, Km 24.6, Rio Grande, and Marginal Ponce Bypass No. 2870, Ponce.

Specifically, as of August 2013, the licensee stored licensed material in Carretera PR 21 Km 8.0, Terrenos de Antigua Penitenciaría Oso Blanco, San Juan, Puerto Rico and as of November 2013, the licensee stored licensed material at Carretera PR 123, Km 9.7, Bo Masqueyez, Ponce, Puerto Rico, locations not authorized on the license.

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

Pursuant to the provisions of 10 CFR 2.201, Ferrovia Agroman, SA is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, Region I, 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, (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 to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, any response which contests an enforcement action shall be submitted under oath or affirmation.

Your response will be placed in the NRC Public Document Room (PDR) and on the NRC Web site. To the extent possible, it should, therefore, not include any personal privacy, proprietary, or safeguards information so that it can be made publically available without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

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

Dated This 15 day of April 2014