



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV
1600 EAST LAMAR BOULEVARD
ARLINGTON, TEXAS 76011-4511

May 31, 2018

Aaron Swan, Owner
Aaron Swan and Associates
29310 Gary Street,
Pierre, SD 57501

SUBJECT: NRC INSPECTION 030-33482/2018-001 AND NOTICE OF VIOLATION

Dear Mr. Swan:

This letter refers to the announced inspection conducted on April 5, 2018, at your facility in Pierre, South Dakota. The inspection continued with in-office reviews until May 10, 2018. The inspection was an examination of activities conducted under your license as they relate to public health and safety, to confirm compliance with the U.S. Nuclear Regulatory Commission's (NRC's) rules, regulations, and with the conditions of your license. Within these areas, the inspection consisted of a selected examination of procedures and representative records, and interviews with personnel. The preliminary inspection findings were discussed with Mr. Steve McCarthy, Lab Manager, at the conclusion of the onsite portion of the inspection. A final telephonic exit briefing was conducted with Messrs. McCarthy and Edmund Jacobsen on May 10, 2018.

Based on the results of this inspection, the NRC has determined that two Severity Level IV violations of NRC requirements occurred. The violations were evaluated in accordance with the NRC Enforcement Policy, which can be found at the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. The violations are cited and described in the enclosed Notice of Violation (Notice). The violations involved the failure to: (1) ensure that authorized users have successfully completed one of the training courses described in NUREG-1556, Volume 1., Revision 1, dated November 2001; and (2) provide hazmat employees with the training required by 49 CFR 172, Subpart H, at least once every 3 years.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The guidance in NRC Information Notice 96-28, "Suggested Guidance Relating to Development and Implementation of Corrective Action," may be helpful in preparing your response. You can find the Information Notice on the NRC website at: <http://pbadupws.nrc.gov/docs/ML0612/ML061240509.pdf>. Information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance will be (was) achieved should be addressed. The NRC review of your response to the Notice will also determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

To the extent possible, your response should not include any personal privacy or proprietary 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).

In accordance with 10 CFR 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter, its enclosure, and your response, will be made available electronically for public inspection in the NRC Public Document Room or from 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>.

Should you have any questions regarding this letter or the enclosed Notice, please contact Michelle Simmons at 817-200-1590, or the undersigned at 817-200-1455.

Sincerely,

/RA/

Michael C. Hay, Chief
Materials Licensing and Inspection Branch
Division of Nuclear Materials Safety

Docket: 030-33482
License: 40-27491-01

Enclosure:
Notice of Violation

cc:
T. McCaskell, Administrator
State of South Dakota

NRC INSPECTION REPORT 030-33482/2018-001 - DATED MAY 31, 2018.

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ADAMS ACCESSION NUMBER: **ML18152A990**

SUNSI Review: ADAMS: Non-Publicly Available Non-Sensitive Keyword:
 By: MRS5 Yes No Publicly Available Sensitive

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NOTICE OF VIOLATION

Aaron Swan and Associates
Pierre, SD

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

During an NRC inspection conducted on April 5, 2018 through May 10, 2018, two violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. License Condition 21 of NRC License 40-27491-01, Amendment 4, requires, in part, that the licensee shall conduct its program in accordance with the statements, representations, and procedures contained in the documents, including any enclosures, listed in the license.

License application dated August 7, 2014, Item 8, states in part, that before using licensed materials, authorized users will have successfully completed one of the training courses described in the Criteria under the section entitled, "Training for Individuals Working in or Frequenting Restricted Areas," in NUREG-1556, Volume 1., Revision 1, dated November 2001.

The Criteria states that authorized users must have adequate training and experience and that the NRC has found successful completion of one of the following as evidence of adequate training: (1) a portable gauge manufacturer's course for users, or (2) an equivalent course that meets the criteria in Appendix D of NUREG-1556, Volume 1, Revision 1, dated November 2001. Appendix D, "Criteria for Acceptable Training Courses for Portable Gauge Users," specifies the course content as 1.5 to 2 hours of radiation safety and regulatory requirements, 1.5 to 2 hours of practical explanation of portable gauge theory and operation, and that the course examination result in at least a 70 percent score on a 25 to 50 question closed book written test.

Contrary to the above, on April 5, 2018, the licensee failed to conduct its program in accordance with the statements, representations, and procedures contained in the documents listed in the license.

Specifically, at least one authorized user did not successfully complete a portable gauge manufacturer's course for users or an equivalent course that meets the criteria in Appendix D in NUREG-1556, Volume 1, Revision 1, dated November 2001. The individual was authorized to use licensed materials and did not receive 1.5 to 2 hours of training on radiation safety and regulatory requirements, 1.5 to 2 hours of practical explanation of portable gauge theory and operation, and the individual did not score at least 70 percent on a closed book written examination that consisted of 25 to 50 questions.

This is a Severity Level IV violation (Section 6.3.d of the NRC Enforcement Policy).

- B. Title 10 of CFR 71.5(a) requires, in part, that each licensee who transports licensed material outside the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the U.S. Department of Transportation regulations in 49 CFR Parts 107, 171 through 180, and 390 through 397, appropriate to the mode of transport.

Enclosure

Title 49 of CFR 172.704(c)(2) requires, in part, that a hazmat employee must receive the training required by 49 CFR 172, Subpart H, at least once every 3 years.

License Condition 19 of NRC License 40-27491-01, states that the licensee is authorized to transport licensed material only in accordance with the provisions of 10 CFR Part 71, "Packaging and Transportation of Radioactive Material."

Contrary to the above, as of April 5, 2018, the licensee failed to provide hazmat employees with the training required by 49 CFR 172, Subpart H, at least once every 3 years. Specifically, on at least one occasion, between August 12, 2012 and April 5, 2018, licensee hazmat employees transported a portable gauge containing Class 7 radioactive material on South Dakota's public highways, and they had not received hazmat training.

This is a Severity Level IV violation (Section 6.8.d. of the NRC Enforcement Policy).

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 20555-0001, with a copy to the Regional Administrator, Region IV, 1600 E. Lamar Blvd., Arlington, Texas 76011, 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: (1) the reason for the violations, or, if contested, the basis for disputing the violations or severity level; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken; 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 requiring information 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.

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>. To the extent possible, your response should not include any personal privacy or proprietary 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).

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

Dated this 31st of May 2018.