



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
REGION IV
1600 EAST LAMAR BOULEVARD
ARLINGTON, TEXAS 76011-4511

April 28, 2025

EAF-RIV-2025-0049 / EA-24-133

Steve McCarty, President
and Radiation Safety Officer
Aaron Swan and Associates
207 E. Capital Ave., Suite 209
Pierre, SD 57501

**SUBJECT: AARON SWAN AND ASSOCIATES – NOTICE OF VIOLATION, NRC
INSPECTION REPORT 030-33482/2024-001**

Dear Steve McCarty:

This letter refers to the unannounced inspection conducted on October 16, 2024, at your facility in Sioux Falls, South Dakota, with continued in-office review through February 18, 2025. The purpose of the inspection was to examine activities conducted under your license as they relate to public health and safety, and to confirm compliance with the U.S. Nuclear Regulatory Commission (NRC) rules and regulations and the conditions of your license. A final exit briefing was conducted by video conference with you on February 18, 2025. Details of the in-office review and four apparent violations were provided to you in the subject inspection report, dated March 3, 2025, Agencywide Documents Access and Management System (ADAMS) Accession No. ML25042A686.

In the letter transmitting the inspection report, we provided you with the opportunity to address the apparent violations identified in the report by either attending a predecisional enforcement conference, requesting alternative dispute resolution mediation, or by providing a written response before we made our final enforcement decision. In a letter dated March 31, 2025 (ML25091A309), you provided a written response to the apparent violations.

Based on the information developed during the inspection and the information you provided in your March 31, 2025, written response to the inspection report, the NRC has determined that four violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation (Notice), and the circumstances surrounding the violations are described in detail in the subject inspection report. The violations involved the failure to: (A) use a minimum of two independent physical controls that formed tangible barriers to secure portable nuclear gauges from unauthorized removal, (B) have a lock or outer locked container designed to prevent unauthorized or accidental removal of the radioactive sealed source from its shielded position, (C) secure packages containing radioactive materials against shifting under conditions normally incident to transport, and (D) maintain a log book for each portable gauge.

The NRC considers Violation A to be significant because of the potential for unauthorized individuals to gain control of the radioactive material and misuse it. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III. The Enforcement Policy can be found on the NRC's website at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

The NRC considers Violations B through D to be less serious, but of more than minor safety significance, and has categorized them in accordance with the NRC Enforcement Policy at Severity Level IV. These violations are being formally cited as violations rather than as non-cited violations because they were identified by the NRC.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$9,000 is considered for a Severity Level III violation.

Because your facility has not been the subject of an escalated enforcement action within the last two routine inspections, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the NRC Enforcement Policy. The NRC has determined that *Corrective Action* credit is warranted based on the prompt and comprehensive corrective actions you implemented. Your corrective actions to address the violation are documented in NRC Inspection Report 030-33482/2024-001 and in your letter dated March 31, 2025.

Therefore, in recognition of the absence of previous escalated enforcement action, and your prompt and comprehensive corrective actions, 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, the issuance of this Severity Level III violation constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC has concluded that information regarding: (1) the reason for the violations; (2) the corrective actions that have been taken and the results achieved; and (3) the date when full compliance was achieved is already adequately addressed on the docket in NRC Inspection Report 030-33482/2024-001 and in your letter dated March 31, 2025. 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 "Agency Rules of Practice and Procedure," a copy of this letter, the 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 in the NRC's 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 or proprietary information so that it can be made available to the public without redaction. The NRC also includes significant enforcement actions on its website at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions>.

If you have any questions concerning this matter, please contact Dr. Lizette Roldán-Otero of my staff at (817) 200-1455.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Monninger".

Signed by Monninger, John
on 04/28/25

John D. Monninger
Regional Administrator

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

Enclosure:
Notice of Violation

AARON SWAN AND ASSOCIATES – NOTICE OF VIOLATION, NRC INSPECTION
REPORT 030-33482/2024-001 DATED APRIL 28, 2025

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DOCUMENT NAME: AARON SWAN AND ASSOCIATES - NOTICE OF VIOLATION, NRC INSPECTION
REPORT 030-33482/2024-001

ADAMS ACCESSION NUMBER: **ML25111A020**

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OFFICE	ES:ACES	TL:ACES	C:DRSS/MIB	RC:ORA	
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NOTICE OF VIOLATION

Aaron Swan and Associates
Sioux Falls, South Dakota

Docket No. 030-33482
License No. 40-27491-01
EAF-RIV-2025-0049 / EA-24-133

During a routine unannounced NRC inspection conducted on October 16, 2024, four violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 30.34(i) requires that each portable gauge licensee shall 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.

Contrary to the above, on October 16, 2024, the portable gauge licensee failed to use a minimum of two independent physical controls that formed tangible barriers to secure portable gauges from unauthorized removal, when portable gauges were not under the control and constant surveillance of the licensee. Specifically, two portable nuclear gauges were left within the unlocked cabs of licensee vehicles, the gauges were not physically secured within the vehicles and were not under the control and constant surveillance of the licensee.

This is a Severity Level III violation (NRC Enforcement Policy, Section 6.3.c.3).

- B. License Condition 17 of NRC License No. 40-27491-01, Amendment No. 5, dated December 21, 2023, requires that each portable nuclear gauge shall have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. The gauge or its container must be locked when in transport, storage, or when not under the direct surveillance of an authorized user.

Contrary to the above, on October 16, 2024, the licensee failed to have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. Specifically, two portable nuclear gauges had locks on the handles of the devices, but the keys were in the locks, and the devices were in containers that were not locked. Both portable nuclear gauges were not under the direct surveillance of an authorized user.

This is a Severity Level IV violation (NRC Enforcement Policy, Section 6.3.d.3).

- C. 10 CFR 71.5(a) requires, in part, that each licensee who transports licensed material on public highways shall comply with the applicable requirements of the U.S. Department of Transportation (DOT) regulations in 49 CFR Parts 171 through 180 appropriate to the mode of transport.

49 CFR 177.834(a) requires, in part, that any package containing any hazardous material, not permanently attached to a motor vehicle, must be secured against shifting, including relative motion between packages, within the vehicle on which it is being transported, under conditions normally incident to transportation.

Enclosure

Contrary to the above, on October 16, 2024, the licensee transported licensed material on public highways and failed to comply with DOT regulation 49 CFR 177.834(a). Specifically, the licensee transported portable nuclear gauges containing licensed materials (Class 7 radioactive material) on public highways, in the cabs of two different vehicles, and failed to block, brace, or otherwise secure the portable nuclear gauge transportation cases against shifting during normal transport conditions.

This is a Severity Level IV violation (NRC Enforcement Policy, Section 6.8.d.5).

- D. License Condition 19 of NRC License No. 40-27491-01, Amendment No. 5, dated December 21, 2023, 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.

Application dated August 7, 2014, Item 10, "Radiation Safety Program – Operating and Emergency Procedures," states, in part, that the licensee will implement and maintain the operating, emergency, and security procedures in "Errata: Appendix H of NUREG-1556, Vol. 1, Rev. 1, dated November 2001."

Errata: Appendix H to NUREG-1556, Vol. 1, Rev. 1, dated November 2001, states, in part, under "Operating Procedures," to sign out the portable gauge in a log book (that remains at the storage location), including the date(s) of use, name(s) of the authorized users who will be responsible for the portable gauge, and the temporary jobsite(s) where the portable gauge will be used.

Contrary to the above, on October 16, 2024, the licensee failed to conduct its program in accordance with the statements, representations, and procedures contained in the documents, including any enclosures listed in the license. Specifically, for its portable gauge storage location in Sioux Falls, South Dakota, the licensee failed to sign out two portable gauges in a log book (that remains at the storage location), including the date(s) of use, name(s) of the authorized users who will be responsible for the portable gauge, and the temporary jobsite(s) where the portable gauge will be used. Although both portable gauges were not in storage on October 16, 2024, the licensee's log book indicated that both gauges were in storage.

This is a Severity Level IV violation (NRC Enforcement Policy, Section 6.3.d.3).

The NRC has concluded that information regarding: (1) the reason for the violations; (2) the corrective actions that have been taken and the results achieved; and (3) the date when full compliance was achieved is already adequately addressed on the docket in NRC Inspection Report 030-33482/2024-001 and in your letter dated March 31, 2025.

However, if the description therein does not accurately reflect your position or your corrective actions, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 within 30 days of the date of the letter transmitting this Notice of Violation. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation; EAF-RIV-2025-0049 / EA-24-133," 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, U.S. Nuclear Regulatory Commission, Region IV, 1600 East Lamar Blvd., Arlington, Texas 76011-4511, and email it to R4Enforcement@nrc.gov.

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, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

If you choose to respond, 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 website at <http://www.nrc.gov/reading-rm/adams.html>. Therefore, to the extent possible, the 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 that such material is withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (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 28th day of April 2025