



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

February 08, 2024

EA-23-136

Erik J. Forster, P.E.
and Vice President
North American Testing, Inc.
5645 Industrial Place
Colorado Springs, CO 80916

SUBJECT: NORTH AMERICAN TESTING, INC. – NOTICE OF VIOLATION, NRC
INSPECTION REPORT 150-00005/2023-001

Dear Erik Forster:

This letter refers to the inspection that was performed on June 28, 2023, at a temporary job site on Buckley Space Force Base, Colorado, with continued in-office review through November 27, 2023. The purpose of the inspection was to examine activities conducted under your general license pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 150 as they relate to public health and safety and to confirm compliance with the U.S. Nuclear Regulatory Commission (NRC) rules and regulations. Within these areas, the inspection consisted of an examination of selected procedures and representative records, observation of licensed activities, independent radiation measurements, and interviews with personnel. A final exit briefing was conducted with you on November 29, 2023. Details of the inspection and the apparent violation were provided to you in the subject inspection report, dated December 13, 2023, Agencywide Documents Access and Management System (ADAMS) Accession No. ML23333A860.

In the letter transmitting the inspection report, we provided you with the opportunity to address the apparent violation identified in the report by either attending a predecisional enforcement conference, participating in alternative dispute resolution mediation, or by providing a written response before we made our final enforcement decision. In a letter dated January 8, 2024 (ML24010A087), you provided a written response to the apparent violation.

Based on the information developed during the inspection and the information you provided in your January 8, 2024, written response to the inspection report, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice), and the circumstances surrounding the violation are described in detail in the subject inspection report. The violation involved the failure to meet the filing requirements of 10 CFR 150.20(b)(1) and 10 CFR 150.20(b)(2) when working in exclusive Federal jurisdiction.

The NRC considers the violation to be a significant violation because the failure to file a submittal containing an NRC Form 241 prior to commencing licensed activities in exclusive Federal jurisdiction prevented the NRC from inspecting these areas to ensure that licensed material is being used safely and in accordance with NRC requirements. Therefore, this

violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III. The current Enforcement Policy can be found on the NRC's website at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$9,000 is considered for 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 the NRC Inspection Report 150-00005/2023-001 and in your letter dated January 8, 2024.

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, 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 the NRC Inspection Report 150-00005/2023-001 and in your letter dated January 8, 2024. 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,



Signed by Monninger, John
on 02/08/24

John D. Monninger
Regional Administrator

Docket No. 150-00005
License No. General license pursuant
to 10 CFR 150.20

Enclosure:
Notice of Violation

cc w/Enclosure:
James Grice, Manager
Radiation Control Program
Colorado Department of Public Health
and Environment

NORTH AMERICAN TESTING, INC. – NOTICE OF VIOLATION, NRC INSPECTION
 REPORT 150-00005/2023-001 - DATED FEBRUARY 08, 2024

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OFFICIAL RECORD COPY

NOTICE OF VIOLATION

North American Testing, Inc.
Colorado Springs, Colorado

Docket No. 150-00005
License No. General License
EA-23-136

During an NRC inspection and in-office review conducted from June 28 to November 27, 2023, one violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 150.20(a)(1) requires, in part, that any person who holds a specific license from an Agreement State is granted a 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 an area of exclusive Federal jurisdiction under the general license provided under 10 CFR 150.20 shall, at least 3 days before engaging in each activity for the first time in a calendar year (CY), file a submittal containing an NRC Form 241, "Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters," a copy of its Agreement State specific license, and the appropriate fee, with the Regional Administrator of the appropriate NRC regional office.

10 CFR 150.20(b)(2) requires, in part, that any person engaging in activities in an area of exclusive Federal jurisdiction under the general license provided under 10 CFR 150.20 shall file an amended NRC Form 241 or letter with the Regional Administrator to request approval for changes in work locations, radioactive material, or work activities different from the information contained on the initial NRC Form 241.

Contrary to the above, from January 12 to June 28, 2023, North American Testing, Inc., a licensee of the State of Colorado, engaged in activities in areas of exclusive Federal jurisdiction and failed to: (1) submit an NRC Form 241, a copy of its Agreement State specific license, and the appropriate fee, at least 3 days before engaging in each activity for the first time in a CY; and (2) file an amended NRC Form 241 or letter with the Regional Administrator to request approval for changes in work locations. Specifically, for CY 2023, the licensee: (1) commenced licensed activities on January 12, 2023, in an area of exclusive Federal jurisdiction on Fort Carson, Colorado, and did not submit the required documents and fee to the NRC until April 26, 2023, more than 3 days after engaging in the licensed activity; and (2) failed to request NRC approval for all work locations in exclusive Federal jurisdiction, including four work locations on Fort Carson.

This is a Severity Level III Violation (Enforcement Policy Section 6.9.c.2.c).

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 the NRC Inspection Report 150-00005/2023-001 and in your letter dated January 8, 2024.

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

Enclosure

choose to respond, clearly mark your response as a "Reply to a Notice of Violation; EA-23-136," 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).

Dated this 8th day of February 2024