

# PALMERTON & PARRISH, INC.

## CIVIL, GEOTECHNICAL & MATERIALS ENGINEERS TESTING LABORATORIES AND ENVIRONMENTAL SERVICES

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Geotechnical Foundation  
Materials of Construction  
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Core Drilling  
Environmental Audits

September 24, 2001

US Nuclear Regulatory Commission  
ATTN: Document Control Desk  
Washington, DC 20555

We have received your letter dated September 7, 2001. We agree with the statement of facts contained in the Executive Summary. The Report Details of your letter are correct and we do not contest the facts of the case. In fact, we have been very forthcoming with the facts as is evidenced of our letter of August 24, 20-01. We do not see the need to request a "pre-decisional enforcement conference" as we do not intend to dispute the facts in this event.

However, we wish to contest the monetary amount of \$7,500.00 as the Civil Penalty. Attached to this letter is a Troxler Standard Source Recovery Price List dated August 14, 2001 indicating that the disposal price without the purchase of a new gauge would be \$300.00 for the Model 3440 containing 8mCi of Cesium 137 and 40mCi of Americium 241-Be. Added to this cost would be a charge of less than \$200.00 for the transportation of the gauge by Federal Express to the disposal site. We are attaching a copy of a Federal Express Invoice indicating a somewhat lessor transportation cost. Transportation may escalate due to the recent unpleasantness and its effect on the airline industry. On present basis, 3 times the disposal cost would be approximately \$1,500.00.

We also do not feel that you have considered a number of mitigating circumstances in the establishment of the \$7,500.00 Civil Penalty. This mitigating circumstances include:

1. Our firm has had a clean history in the handling, transportation and use of Nuclear Density Gauges and this is our first infraction in 12 plus years.
2. We performed all items that a licensee is supposed to perform when an event of this type takes place as we understand them.
3. We went beyond the requirements of our NRC License and Regulations in that we contacted both the local office of Emergency Preparedness for Greene County and the news media. We appeared on three television stations to explain what had happened at considerable public embarrassment. We offered and paid a \$500.00 reward in an effort to retrieve the gauge as soon as possible. This worked, as we had the gauge back by 6:30 p.m. the same evening.
4. Instead of attempting to hide or dispute facts, our firm has been very open and forthcoming about the events that happened so that events similar to them should not reoccur.

In light of the foregoing mitigating circumstances, we already have a considerable expense of

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US Nuclear Regulatory Commission

September 24, 2001

Page: 2

\$500.00 in reward money plus at least 30 technician and/or officer man-hours spent in the search and retrieval of the gauge and at an average actual cost of some \$15.00 to \$20.00 per hour. Based on the disposal, the cost of \$500.00 as documented by Troxler Standard Fees, we respectfully request that you reconsider the \$7,500.00 Civil Penalty. We of course, would suggest the 3 times disposal cost (\$1,500.00) less the reward money of \$500.00 for a penalty of \$1,000.00. We however, await your review and response.

PALMERTON & PARRISH, INC.

By:



Fred E. Palmerton, P.E.

FEP:djp

Enclosure

cc: Regional Administrator-NRC Region III  
Enforcement Officer-NRC Region III

**Source Recovery Price List**  
**Revised: August 14, 2001**

**Terms and Conditions**

1. Acceptance of any gauge for source recovery is solely at the discretion of Troxler Radiation Safety Department. No gauge will be accepted without a Returned Goods Authorization from Troxler.
2. Acceptance of any source is conditional on the availability of pathways for source disposal, reprocessing, or recycling. Pricing and availability are subject to change at any time.
3. Leaking sources will not be accepted.
4. The customer is responsible for packaging and shipping gauge in compliance with DOT hazardous material regulations. This includes proper shipping papers, packaging, marking, and labeling.
5. The customer is responsible for delivery of gauge to Troxler's Research Triangle Park, NC facility.
6. Troxler reserves the right to return any gauge to the customer if removal of the sources is deemed impractical for any reason.
7. Troxler will provide an acknowledgement of source receipt to the customer upon acceptance of a source.
8. Damaged Troxler gauges may be accepted at Troxler's discretion. The customer must provide close-up photographs of any damaged gauge and leak test results to Troxler for review prior to issuance of Returned Goods Authorization. A surcharge of \$100 will be added to the price for slightly<sup>1</sup> damaged gauges and \$500 for severely<sup>2</sup> damaged gauges.
9. Damaged competitor gauges will not be accepted.
10. Undamaged competitor gauges will be accepted only in conjunction with purchase of a new Troxler gauge. Before Troxler will accept a competitor gauge we must have the following information for each source in the gauge: nuclide, activity, manufacturer, serial #, assay date, leak test certificate, and special form certificate.

<sup>1</sup> Any gauge involved in an accident which suffers slight physical damage, but sources can still be removed by normal means (i.e., source rod can be withdrawn and AmBe source plug can be unscrewed). Most gauges which are struck or run over fall in this category.

<sup>2</sup> Any gauge which has suffered such severe physical damage that the sources cannot be removed by normal means. Gauges involved in fires usually fall in this category.

Troxler Model	Nuclide	Activity (mCi)	Price (with purchase of new gauge)	Price (w/o purchase of new gauge)
3221 3222 3223 3225 3226 3227	Am-241:Be	10	\$100	\$200
3241-A 3241-B 3241-C 3241-G	Am-241:Be	300	\$100	\$200
3241-M 3242	Cf-252	0.1	\$200	\$300
3321 3322 3323 3331 3332 3333	Am-241:Be	10	\$100	\$200
3401, 3401-B 3411, 3411-B 3430 3440 3450	Cs-137 & Am-241:Be	8 40	No Charge	\$300
3430-M 3440-M	Cs-137 & Cf-252	8 0.06	\$400	\$500
3565	Cs-137	8	\$200	\$300
4232	Cf-252	0.1	\$200	\$300
4301 4302 4350	Am-241:Be & Cs-137	10 8	No Charge	\$400
4430	Am-241 & Cf-252	10 0.06	\$300	\$400
4441	Co-60	0.1	Not Accepted	Not Accepted
4442	Co-60 & Cf-252	0.06 0.030	Not Accepted	Not Accepted
4545 4640 4640-B	Cs-137	8	\$200	\$300



**Invoice Number:** 5-743-96052  
**Invoice Date:** Mar 22, 2001  
**Account Number:** 1272-5265-3  
**Page:** 4 of 5

### FedEx Express Payment Type Detail (Original)

**Picked up: Mar 06, 2001**      **Payor: Shipper**      **Reference: 113476**      FedEx Internal Use: 067075430/0001486/\_/\_

- Fuel Surcharge - FedEx must apply a temporary fuel surcharge to reflect current market conditions as they relate to fuel costs.
- Package sent from: 65802 zip code
- Distance Based Pricing, Region 2
- FedEx has audited this airbill for correct pieces, weight, and service. Any changes made are reflected in the invoice amount.

Tracking ID	820535561306	Sender	BRAD R PARRISH P F	Recipient	JOHN BOLTE P R
Service Type	FedEx Priority Overnight		PALMERTON & PARRISH INC		TRI-STATE ENGINEERING
Package Type	FedEx Pak		4166 W KEARNEY ST		1102 W 9TH STREET
Zone	2		SPRINGFIELD MO 65803-9509 US		JOPLIN MO 64801 US
Pieces	1				
Weight	2.0 lbs, 0.9 kgs				
Delivered	Mar 07, 2001 09:42	Transportation Charge			17.75
Service		Fuel Surcharge			0.71
Area Code	AA	Courier Pickup Charge			3.00
Signed by	D.BELL				
Bundle ID	000	<b>Total Charge</b>		<b>USD \$</b>	<b>21.46</b>

**Dropped off: Mar 12, 2001**      **Payor: Shipper**      **Reference: UNIT 5 NUCLEAR GAUGE**      FedEx Internal Use: 701318800/0001327/\_/\_

- Fuel Surcharge - FedEx must apply a temporary fuel surcharge to reflect current market conditions as they relate to fuel costs.
- Distance Based Pricing, Region 4
- FedEx has audited this airbill for correct pieces, weight, and service. Any changes made are reflected in the invoice amount.

Tracking ID	806218111317	Sender	MIKE FOLEY	Recipient	ROBERT ROBERTS
Service Type	FedEx Standard Overnight		PALMERTON & PARRISH INC		GAMMA TRON SERVICES
Package Type	Customer Packaging		4166 W KEARNEY ST		12848 OAK ST
Zone	4		SPRINGFIELD MO 65803-9509 US		PORT ALLEN LA 70767 US
Pieces	1				
Weight	79.0 lbs, 35.9 kgs				
Delivered	Mar 13, 2001 13:54	Transportation Charge			147.00
Service		Fuel Surcharge			5.88
Area Code	AA	Inaccessible Dangerous Goods			25.00
Signed by	R.ROBERTS				
Bundle ID	000	<b>Total Charge</b>		<b>USD \$</b>	<b>177.88</b>

**Picked up: Mar 13, 2001**      **Payor: Shipper**      **Reference: 111899**      FedEx Internal Use: 073137150/0001486/\_/\_

- Fuel Surcharge - FedEx must apply a temporary fuel surcharge to reflect current market conditions as they relate to fuel costs.
- Distance Based Pricing, Region 2
- FedEx has audited this airbill for correct pieces, weight, and service. Any changes made are reflected in the invoice amount.

Tracking ID	820535561340	Sender	BRAD R PARRISH P E	Recipient	JIM GROWNEY CHIEF
Service Type	FedEx Priority Overnight		PALMERTON & PARRISH INC		MDNR - REMEDIATION UNIT
Package Type	FedEx Pak		4166 W KEARNEY ST		1738 E ELM STREET
Zone	2		SPRINGFIELD MO 65803-9509 US		JEFFERSON CITY MO 65101 US
Pieces	1				
Weight	1.0 lbs, 0.5 kgs				
Delivered	Mar 14, 2001 09:39	Transportation Charge			16.25
Service		Fuel Surcharge			0.65
Area Code	AA	Courier Pickup Charge			3.00
Signed by	A.LIGHT				
Bundle ID	000	<b>Total Charge</b>		<b>USD \$</b>	<b>19.90</b>