



UNITED STATES  
**NUCLEAR REGULATORY COMMISSION**  
REGION I  
475 ALLENDALE ROAD  
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

December 17, 2004

Docket No. 03022315

License No. 47-23098-01

Guvenc Argon  
President  
Litwar Processing Company, LLC  
P. O. Box 727  
Laeger, WV 24844-0727

**SUBJECT:** INSPECTION 03022315/2004001, LITWAR PROCESSING COMPANY, LLC,  
VIRGINIA CREWS COAL COMPANY, LAEGER, WEST VIRGINIA AND  
NOTICE OF VIOLATION

Dear Mr. Argon:

On November 30, 2004, Kathy Modes of this office conducted a safety inspection at the Virginia Crews Coal Company, mouth of Lick Branch, off Old Route 52/1, Laeger, West Virginia 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 selected examination of representative records. Additional information provided in the telephone conversation on December 8, 2004 between Ron Dalton of your organization and this office was also examined as part of the inspection. The findings of the inspection were discussed with you and Ron Dalton of your organization at the conclusion of the inspection.

Based on the results of this inspection, it appears that your activities were not conducted in full compliance with NRC requirements. A Notice of Violation is enclosed that categorizes each violation by severity level in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG 1600. You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. After reviewing your response to this Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

G. Argon  
Litwar Processing Company, LLC

2

Please note that on October 25, 2004, the NRC suspended public access to ADAMS, and initiated an additional security review of publicly available documents to ensure that potentially sensitive information is removed from the ADAMS database accessible through the NRC's web site. Interested members of the public may obtain copies of the referenced documents for review and/or copying by contacting the NRC Public Document Room pending resumption of public access to ADAMS. The NRC Public Document Room is located at NRC Headquarters in Rockville, MD, and can be contacted at 800-397-4209 or 301-415-4737 or [pdrc@nrc.gov](mailto:pdrc@nrc.gov).

Your cooperation with us is appreciated.

Sincerely,

***Original signed by John D. Kinneman***

John D. Kinneman, Chief  
Security and Industrial Branch  
Division of Nuclear Materials Safety

Enclosure:  
Notice of Violation

cc:  
David Dalton, Radiation Safety Officer  
State of West Virginia

G. Argon  
Litwar Processing Company, LLC

Distribution:  
D. J. Holody, RI

DOCUMENT NAME: E:\Filenet\ML043550267.wpd

To receive a copy of this document, indicate in the box: "C" = Copy w/o attach/encl "E" = Copy w/ attach/encl "N" = No copy

OFFICE	DNMS/RI	N	DNMS/RI	N	DNMS/RI			
NAME	Kmodes/jdk for:		JDKinneman/jdk					
DATE	12/11/2004		12/17/2004					

OFFICIAL RECORD COPY

## NOTICE OF VIOLATION

Litwar Processing Company, LLC  
Laeger, WV

Docket No. 03022315  
License No. 47-23098-01

During an NRC inspection conducted on November 30, 2004, three violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG-1600, the violations are listed below:

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

Contrary to the above, between January 1, 2001 and December 31, 2003, the licensee did not periodically (at least annually) review the radiation protection program content and implementation. Specifically, the licensee did not audit their program for calendar years 2001, 2002 and 2003.

This is a Severity Level IV violation (Supplement IV).

- B. 10 CFR 71.5(a) requires that a licensee who transports licensed material outside of 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, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 170 through 189.

1. 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 172.204(c) requires, in part, that a hazmat employee receive initial training, and recurrent training at least once every three years.

Contrary to the above, between January 1, 2000 and November 30, 2004, the licensee did not provide training for its hazmat employees which satisfied the requirements in Subpart H to 49 CFR Part 172, and the licensee otherwise meets the definition of hazmat employer in 49 CFR 171.8. Specifically, the gauge user transported the gauge containing cesium-137 and americium-241 on public roads and did not attend hazmat refresher training.

2. 49 CFR 172.301 requires, in part, with exceptions not applicable here, that each package used in transport shall be marked with the proper identification number, preceded by "UN" or "NA" as appropriate for the material as shown in the 49 CFR 172.101 table.

Contrary to the above, on November 30, 2004, the Bill of Lading and a carrying case used to transport a portable nuclear density gauge containing 8 millicuries of cesium-137 and 44 millicuries of americium-241 to nearby coal plants and

refuse areas was not marked with the correct UN identification number (UN3332).

These are Severity Level IV violations (Supplement V).

Pursuant to the provisions of 10 CFR 2.201, Litwar Processing Company, LLC 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 at <http://www.nrc.gov/reading-rm.html>. 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.

Dated this 17<sup>th</sup> day of December 2004