



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

September 7, 2005

Docket No. 03028905
EA No. 05-130

License No. 08-23557-01

John F. Deatruck, P.E., ACIP
Chief Engineer and Acting Director
Department of Transportation
Government of the District of Columbia
2000 14th Street, N.W., 4th Floor
Washington, DC 20009

SUBJECT: INSPECTION 03028905/2005001 AND 2005002, GOVERNMENT OF THE DISTRICT OF COLUMBIA, NOTICE OF VIOLATION

Dear Mr. Deatruck:

This letter refers to your August 18, 2005 correspondence, in response to our July 20, 2005 letter. Our letter dated July 20, 2005, transmitted an inspection report which identified seven apparent violations. Two of the seven violations related to a missing portable nuclear gauge and were being considered for escalated enforcement. These two apparent violations included (1) failure to control and maintain constant surveillance of a portable nuclear gauge, as required by 10 CFR 20.1801 and 1802; and (2) failure to leak test the same nuclear gauge as required by License Condition 14.C. Since these two apparent violations were being considered for escalated enforcement, our July 20, 2005 letter also offered you the opportunity to discuss the findings at a Predecisional Enforcement Conference (PEC) or provide the NRC a written response. You declined the opportunity to attend a PEC and stated that you would provide a written response to the apparent violations.

Your written response, dated August 18, 2005, (ADAMS Accession No. ML052310527) provided new information that the Troxler Model 3411B portable gauge (s/n 7520), previously thought to be lost, was actually properly returned to the manufacturer for disposal in 1997. You also provided documentation confirming that the Troxler Model 3411B was received by the manufacturer in 1997. Based on the additional information you provided, the NRC has concluded that the apparent violations of 10 CFR 20.1801 and 1802 (security) and License Condition 14.C (leak testing) did not occur. Therefore, these matters have been resolved and will not be included in a Notice of Violation.

In your letter dated August 18, 2005, you accepted the remaining five apparent violations for (1) failing to meet the reporting requirement of 10 CFR 20.2201(b), (2) failing to perform an adequate inventory as required by License Condition 16, (3) failing to annually review your program as required by 10 CFR 20.1101(c), (4) failing to use the proper UN number for transporting radioactive material as required by 10 CFR 71.5(a) and 49 CFR 172.301, and (5) failing to lock the gauge or its carrying case as required by License Condition 17. A Notice of Violation is enclosed that categorizes each violation by severity level. Your written response dated August 18, 2005 included a description of your corrective and preventive actions for these five violations.

J. Deatrick
Government of the District of Columbia

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The NRC has concluded that the reason for each violation and the actions taken and planned to correct each violation and prevent recurrence are adequately addressed in your letter dated August 18, 2005. 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. These actions will be examined during a future inspection of your licensed program.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter will be made available for public inspection in the NRC Public Document Room (PDR) or electronically from the Publicly Available Records (PARS) component of the NRC's document system (ADAMS). Your August 18, 2005 letter will not be made available for public inspection in the PDR or from ADAMS because it contains specific information concerning the isotopes, activities and locations of radioactive material use and storage authorized by your license. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm.html> (the Public Electronic Reading Room).

Your cooperation with us is appreciated.

Sincerely,

Original signed by Francis Costello

George Pangburn, Director
Division of Nuclear Materials Safety

Enclosure:
Notice of Violation

cc:
Lawrence Chung, Radiation Safety Officer
Wasi Khan, Chief of QA/QC Division
District of Columbia

J. Deatrick
Government of the District of Columbia

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NOTICE OF VIOLATION

Government of the District of Columbia
Washington, DC

Docket No. 03028905
License No. 08-23557-01

During an NRC inspection conducted on March 1, 2005 and April 20, 2005, five violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 20.2201(b) requires, in part, that each licensee make a written report within 30 days after making a telephone notification regarding the loss of radioactive material. The written report shall include (i) a description of the licensed material involved, (ii) a description of the circumstances under which the loss or theft occurred; (iii) a statement of disposition, or probable disposition, of the licensed material involved; (iv) exposures of individuals to radiation and the possible total effective dose equivalent to persons in unrestricted areas; (v) actions that have been, or will be taken, to recover the material; and (vi) procedures, or measures, that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed material.

Contrary to the above, on March 14, 2005, the licensee notified the NRC about a missing portable nuclear density gauge which was identified on March 1, 2005. On April 15, 2005, the licensee submitted a 30-day report. However, the written report did not include (ii) a description of the circumstances under which the loss or theft occurred; (iii) a statement of disposition, or probable disposition, of the licensed material involved; (iv) exposures of individuals to radiation and the possible total effective dose equivalent to persons in unrestricted areas; (v) actions that have been, or will be taken, to recover the material; and (vi) procedures, or measures, that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed material.

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

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

Contrary to the above, between January 1, 2001 and March 1, 2005, the licensee did not periodically (at least annually) review the radiation protection program content and implementation.

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

- C. License Condition 16 of License No. 08-23557-01 requires, in part, the licensee conduct a physical inventory every six months to account for all sealed sources and/or devices.

Contrary to the above, between December 3, 2002 and March 1, 2005, the licensee did not conduct an adequate physical inventory every six months to account for all sealed sources and/or devices. The physical inventories conducted were inadequate because the licensee conducted the inventories by counting the gauge carrying cases and not by opening the cases or otherwise determining that each gauge and radioactive material were actually present.

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

- D. License Condition 17 of License No. 08-23557-01 requires, in part, that each portable nuclear gauge or its container be locked when in transport or storage.

Contrary to the above, on March 1, 2005, four portable nuclear gauges or their container were not locked when in storage. Specifically, the Troxler Model 3241C (serial number 1167) was out of its case and not locked. In addition, neither the case nor the gauge itself were locked for Troxler Models 3241 (serial number 1167), 3411B (serial number 16053) and 4640 (serial number 459).

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

- E. 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.

49 CFR 172.301(a) requires, in part, that for each package containing radioactive materials, the packaging must be marked with the proper shipping name and identification number preceded by "UN" or "NA" as appropriate for the material as shown in 172.101 Table.

Contrary to the above, as of April 20, 2005, the licensee transported outside the confines of its plant a portable nuclear density gauge containing cesium-137 and americium-241 in a Type A package which was not marked with the correct UN number. Specifically, a Troxler Model 3440 gauge carrying case located at a temporary job site near Walter Reed Medical Center had the incorrect UN number (UN2974) listed on it.

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

Pursuant to the provisions of 10 CFR 2.201, the Government of the District of Columbia would normally be 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). However, as discussed with the letter which transmits this Notice, it appears that the reason for each violation and the corrective actions taken and planned to correct each violation and prevent recurrence are adequately addressed on the docket in your letter dated August 18, 2005. Therefore, you are not required to respond to this

letter unless the description therein does not accurately reflect your corrective actions or your position. If you choose to provide a reply, it 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. You may reference or include previous correspondence in order to avoid repetition.

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 may be placed in the NRC Public Document Room (PDR) and on the NRC Web site. 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 7th day of September 2005