



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

October 12, 2005

Docket No. 03019398
EA No. 05-162

License No. 37-20546-01

John H. Laver, III
President
Mayer Brothers Construction Company
1902 Cherry Street
Erie, PA 16502

SUBJECT: NRC INSPECTION REPORT NO. 03019398/2004001, INVESTIGATION REPORT NO. 1-2004-047, MAYER BROTHERS CONSTRUCTION COMPANY, ERIE, PENNSYLVANIA, AND NOTICE OF VIOLATION

Dear Mr. Laver:

On September 29, 2004, Richard (Dick) Ladun of this office conducted a safety inspection at your facilities 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. The findings of the inspection were discussed with Phillip K. Whittingham of your organization at the conclusion of the inspection.

In addition to this inspection, NRC's Office of Investigations (OI) completed an investigation on June 27, 2005. The purpose of the OI investigation was to determine if the Radiation Safety Officer (RSO) of Mayer Brothers Construction Company made a false statement to the NRC inspector regarding the number of nuclear gauges possessed under the license. OI concluded that the RSO initially made a false statement during the NRC inspection regarding the number of nuclear gauges possessed, but later corrected the false statement with the inspector. OI concluded that the RSO deliberately stated that the Company possessed only one gauge containing licensed material, when, in fact, the Company possessed two such gauges.

Based on the results of the inspection and the OI investigation, the NRC has determined that four violations of NRC requirements occurred. A Notice of Violation (Notice) is enclosed that categorizes each violation by severity level. The first violation is a failure to provide accurate information to the NRC, contrary to 10 CFR 30.9. The second violation is possession of radioactive material not authorized by your license. The third violation is failure to conduct an annual review of your radiation protection program, contrary to 10 CFR 20.1101. The failure to exchange film badges at least bimonthly and not possessing or having access to a radiation survey meter contrary to License Condition No. 20, constitutes the fourth violation. These violations are classified at Severity Level IV in accordance with the NRC Enforcement Policy. Specifically, the violations posed a minimal health and safety problem because 1) the inaccurate information initially provided to the inspector was corrected by the individual before the conclusion of the inspection, 2) the unauthorized device was similar to the device you were authorized to possess, and 3) each of these violations represents an isolated rather than a

programmatic weakness in your radiation safety program. Failures to provide accurate information or possession of unauthorized materials in the future may result in additional enforcement action.

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.

You may request Alternative Dispute Resolution (ADR) with the NRC in an attempt to resolve any disagreement on whether these violations occurred and the appropriate enforcement action. The enclosed Notice of Violation is the enforcement action proposed for these violations. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ during a pilot program which is now in effect is mediation. Additional information concerning the NRC's pilot program is described in the enclosed brochure (NUREG/ BR-0317) and can be obtained at <http://www.nrc.gov/what-we-do/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program via a neutral party. You must contact ICR at (877) 733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of these issues through ADR. You must contact Mr. John D. Kinneman at (610) 337-5252 within 10 days of the date of this letter to notify the NRC of your decision to respond to the Notice or pursue ADR. An ADR session will generally be held within 30 days of the date of this letter.

Current NRC regulations are included on the NRC's website at www.nrc.gov; select **Nuclear Materials; Medical, industrial, and academic uses of nuclear material**; then **toolkit index page**. The Current General Policy and Procedure for NRC Enforcement Actions are included on the NRC's website at www.nrc.gov; select **What We Do, Enforcement**, then **Enforcement Policy**. Or you may obtain these documents by contacting the Government Printing Office (GPO) toll-free at 1-888-293-6498. The GPO is open from 7:00 a.m. to 9:00 p.m. EST, Monday through Friday (except Federal holidays).

In accordance with 10 CFR 2.390 of NRC's "Rules of Practice," a copy of this letter and the enclosed report will be made available electronically for public inspection from the NRC's document system (ADAMS), accessible from the NRC Website at <http://www.nrc.gov/reading-rm/adams.html>.

J. Laver
Mayer Brothers Construction Company

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Your cooperation with us is appreciated.

Sincerely,

Original signed by Francis Costello

George Pangburn, Director
Division of Nuclear Materials Safety

Enclosure:

1. Notice of Violation
2. Inspection Report No. 03019398/2004-001
3. Brochure/NUREG BR/0317

cc:

Phillip K. Whittingham, Radiation Safety Officer
Commonwealth of Pennsylvania

J. Laver
Mayer Brothers Construction Company

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DATE	10/03/2005		10/03/2005		10/12/2005		10/03/2005	
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OFFICIAL RECORD COPY

NOTICE OF VIOLATION

Mayer Brothers Construction Company
Erie, PA

Docket No. 03019398
License No. 37-20546-01
EA No. 05-162

During an NRC inspection conducted on September 29, 2004, four violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 30.9 requires, in part, that the information provided to the Commission by a licensee be complete and accurate in all material respects.

Contrary to the above, the information provided to the Commission by the licensee was not accurate in all material respects. Specifically, during a routine inspection on September 29, 2004, the licensee's Radiation Safety Officer informed the inspector that the licensee possessed one nuclear density gauge. This was not accurate information because on September 29, 2004, the licensee possessed two such gauges.

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

- B. Item 9. of Amendment No. 03 to NRC License No. 37-20546-01, in effect on September 29, 2004 authorizes possession and use of Troxler Model 3411B portable moisture/density gauges only.

Contrary to the above, on September 29, 2004, the licensee possessed and used a Troxler Model 3440 portable moisture/density gauge that was not authorized by the license.

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

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

Contrary to the above, as of September 29, 2004, the licensee did not review the radiation safety program at least annually since 1999.

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

- D. Condition 20 of Amendment No. 03 to NRC License No. 37-20546-01 requires, in part, that the licensee conduct its program in accordance with the statements contained in the application dated September 25, 2003.

Section 8.b. of the application requires that film badges be exchanged bimonthly, and Section 10. of the application requires, in part, that the licensee possess or have access to a radiation survey meter that meets the criteria in the section entitled "Radiation Safety Program - Instruments" in NUREG-1556, Volume 1, dated May 1997, in the event of an incident.

Contrary to the above, as of September 29, 2004, the licensee:

- (I) Did not exchange at the specified frequency. Specifically, in 2004, the film badges were exchanged at as much as four month intervals.
- (ii) Did not possess or have access to a radiation survey instrument.

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

Pursuant to the provisions of 10 CFR 2.201, Mayer Brothers Construction Company 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. 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 12th day of October 2005

U.S. NUCLEAR REGULATORY COMMISSION
REGION I

INSPECTION REPORT

Inspection No. 03019398/2004001
Docket No. 03019398
License No. 37-20546-01
Licensee: Mayer Brothers Construction Company
Address: 1902 Cherry Street
Erie, Pennsylvania
Locations Inspected: 1225 West 18TH Street
Erie, Pennsylvania
Inspection Date: September 29, 2004

Inspector:	<i>Original signed by</i> <i>John D. Kinneman</i>	<i>October 06, 2005</i>
	_____ Richard Ladun Health Physicist	_____ date
Approved By:	<i>Original signed by</i> <i>John D. Kinneman</i>	<i>October 06, 2005</i>
	_____ John D. Kinneman, Chief Security and Industrial Branch Division of Nuclear Materials Safety	_____ date

EXECUTIVE SUMMARY

Mayer Brothers Construction Company
NRC Inspection Report No. 03019398/2004001

A routine unannounced inspection was conducted on September 29, 2004 by a Regional based inspector at the licensee's facility located at 1225 West 118th Street, Erie, Pennsylvania.

The following apparent violations were identified:

1. Item No. 9 of the license authorizes the use of only a Troxler Model 3411B portable gauging device. The licensee was using a Troxler Model 3440 gauge which was not authorized in Item 9.
2. License Condition No. 20 requires that:
 - A. Dosimetry be exchanged bimonthly. Dosimetry was not being exchanged bimonthly since 2003.
 - B. The licensee possess or have access to a survey meter. At the time of this inspection the licensee did not have access to or possess a survey meter.
3. 10 CFR20.1101(c) requires that the radiation safety program be reviewed annually. The radiation safety program had not been reviewed since 1999.

REPORT DETAILS

I. Organization and Scope of the Program

a. Inspection Scope

The inspector examined the following focus areas: management organization and inventory control.

b. Observations and Findings

Mayer Brothers Construction Company (MBCC) operates a small program which is active in the warm months of the year. At the time of the inspection there were two authorized users, including the RSO. The licensee uses a Troxler Model 3411B portable/density gauge to measure the properties of materials.

The RSO supervises one authorized user. The RSO reports directly to the company President who is not trained in the use of the device.

In response to a question, the RSO told the inspector that MBCC only possessed one Troxler device and the physical inventory record dated August 2004 examined by the inspector reflected only one device. The inspector observed only one device in the storage safe. However, the inspector also observed an empty gauge storage case in a work area. Later in the inspection, as the inspector recorded the serial number on the empty case, the RSO advised the inspector that, in fact, the MBCC possessed two devices and that the second device was a Troxler Model 3440 (Serial No. 22195). He explained that gauge was being used by a technician in the yard just as the inspector drove in to the plant parking area. He stated that he had gotten the Troxler Model 3440 gauge just a day prior to the inspection from the AT Construction Company.

On October 8, 2004 the licensee requested an amendment to the license to authorize the possession of a Troxler Model 3440 density gauge. On October 25, 2004 the NRC granted the request by issuing amendment No. 04 to License No. 37-20546-01.

c. Conclusions

One apparent violation was identified during the course of the inspection.

License Condition No. 9 authorizes the use of only a Troxler Model 3411B device. The licensee also possessed a Troxler Model 3440 gauge which was not authorized.

II. Radiation Safety Program

a. Inspection Scope

The inspector examined the following focus areas: radiation safety protection program, security, and radiation safety related records. The inspector also performed radiation survey measurements of the unrestricted areas near the storage safe.

b. Observations and Findings

The inspector was told by the RSO that personal dosimetry had not been exchanged bimonthly, if at all, since 2003. The RSO stated that the licensee did not possess or have access to a survey meter in the event of an emergency. The RSO also acknowledged that the radiation safety program had not been reviewed annually since 1999 as required.

The inspector conducted radiation survey measurements in the unrestricted areas near the storage safe. All readings were well below NRC regulatory limits.

c. Conclusions

The following apparent violations were identified.

1) License condition No. 20 requires that dosimetry be exchanged bimonthly. Dosimetry was not being exchanged bimonthly. 2) The same license condition requires that the licensee possess or have access to a survey meter. The licensee did not possess or have access to a survey meter. 3) 10 CFR 20.1101(c) requires that the radiation safety program be reviewed annually. The radiation safety program had not been reviewed since 1999.

III. Exit Meeting

The inspector meet with the RSO at the conclusion of the inspection and discussed the inspection findings.

PARTIAL LIST OF PERSONS CONTACTED

Licensee

P. K. Whittingham, RSO #
S. Dolach, Technician

individual present at the entrance and exit meeting