



December 16, 2009

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, DC 20555-0001

Subject: "Reply to NRC INSPECTION REPORT 030-05179/09-01 AND NOTICE OF VIOLATION"

This is Montana Department of Transportation's (MTD's) response to the above notice of violation.

Violation: A) a failure to follow licensee procedures for wearing personnel monitoring devices when using radioactive materials.

1. **Reason for violation:** the gauge operator had been assigned a Thermoluminescent Dosimeter (TLD) and had taken his TLD home with him the night before. Upon returning to work on the day of the NRC inspection he realized he had forgotten to take his TLD to work with him. He then operated a nuclear moisture/density gauge without his radiation monitoring device.

2. **Corrective steps and results:** the gauge operator and his supervisor were immediately informed of the violation both by telephone and email. All other gauge operator supervisors along with our statewide lab supervisors were informed of the violation. These people were instructed of our policy that all gauge operators must wear TLDs when operating nuclear gauges. They are redoubling their effort to regularly check operators.

3. **Corrective steps to avoid further violations:** all gauge operators, their supervisors and statewide lab supervisors will be reminded in the spring of 2010 as construction season begins and at future HAZMAT refresher training of this violation and the importance of always wearing their TLDs when operating gauges. The lab supervisors have met and been instructed on the need to monitor field tester closely.

4. **Date full compliance will be achieved:** full compliance was achieved October 23, 2009 the day after the NRC inspection. Monitoring of gauge operators will be a continuing duty of operator supervisors, statewide lab personnel and the MDT RSO.

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Violation: B 1&2) a failure to have the appropriate UN number and Transportation Index on the Department of Transportation shipping papers.

1. **Reason for violation:** we thought all MDT's shipping papers had been updated to the new UN number and the Transportation Index (TI) had been correctly affixed. Somehow the gauge operator ended up using a shipping paper without the correct information.

2. **Corrective steps taken:** the gauge operator's supervisor and the lab personnel from this Area were notified of the violation telephonically and by email. Attached to the email was the word document with the correct UN and TI numbers (UN3332 and 0.6). The incorrect papers were replaced with the correct ones.

3. **Corrective steps to avoid further violations:** all gauge operator supervisors and statewide lab supervisors were informed by email of the violation. They were sent attachments of the correct shipping papers and were instructed to check their operators shipping papers to make sure they were updated.

4. **Date when full compliance will be achieved:** full compliance to these violations was completed on October 23, 2009. As soon as we found out about the violations we emailed the corrected shipping paper to the gauge operators supervisor, the supervisor printed out the corrected paper and instructed the gauge operator to replace the outdated paper.

Rex G. Hoy
Radiation Safety Officer
Montana Department of Transportation

copies: NRC Regional Administrator, Region IV



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
612 EAST LAMAR BLVD, SUITE 400
ARLINGTON, TEXAS 76011-4125

December 2, 2009

Rex Hoy
Radiation Safety Officer
Materials Bureau
State of Montana
Department of Transportation
2701 Prospect Avenue
Helena, Montana 59620

SUBJECT: NRC INSPECTION REPORT 030-05179/09-01 AND NOTICE OF VIOLATION

Dear Mr. Hoy:

This refers to the inspection conducted from October 22, through October 26, 2009, at temporary job sites near Arlee, Montana, at your field office in Missoula, Montana, and at your main office in Helena, Montana. This inspection was an examination of activities conducted under your license as they relate to safety and compliance with the Commission's rules and regulations and with the conditions of your license. Within these areas, the inspection consisted of selected examination of procedures and representative records, observations of activities, and interviews with personnel. A preliminary exit briefing was conducted with you on October 26, 2009, and a final exit briefing was conducted with you telephonically on November 6, 2009.

Based on the results of this inspection, the NRC has determined that three Severity Level IV violations of NRC requirements occurred. The violations were evaluated in accordance with the NRC Enforcement Policy included on the NRC's Web site at www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html. The violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the Notice. The violations are being cited in the Notice because they were identified by the NRC during the inspection. The two violations involved: 1) a failure to follow licensee procedures for wearing personnel monitoring devices when using radioactive materials, 2) a failure to have the appropriate UN number on the Department of Transportation shipping papers, and 3) a failure to have the appropriate Transportation Index on the Department of Transportation shipping papers.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. For your consideration and convenience, an excerpt from NRC Information Notice 96-28, "Suggested Guidance Relating to Development and Implementation of Corrective Action," is enclosed." The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from

the NRC's Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Should you have any questions regarding this letter or the enclosed Notice, please contact Jason Razo at (817) 276-6589 or the undersigned at (817) 860-8252.

Sincerely,



Anthony D. Gaines, Chief
Nuclear Materials Safety Branch A

Docket: 030-05179
License: 25-11498-01

Enclosures:

1. Notice of Violation
2. Information Notice 96-28

cc w/Enclosure 1:

Roy Kemp
Licensing Bureau Chief
Division of Quality Assurance
Department of Public Health and
Human Services
2401 Colonial Drive
P.O. Box 202953
Helena, MT 59620-2953

NOTICE OF VIOLATION

State of Montana
Department of Transportation
Helena, Montana

Docket: 030-05179
License: 25-11498-01

During an NRC inspection conducted from October 22 through October 26, 2009, three violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. License condition 20 of NRC Materials License 25-11498-01, Amendment 25, states, in part, that the licensee shall conduct its program in accordance with the statements, representations, and procedures contained in the documents, including any enclosures in the license application dated September 27, 2004.

Item 10: "RADIATION SAFETY PROGRAM – OPERATING AND EMERGENCY PROCEDURES", of the application states, in part, that the licensee will implement and maintain the operating and emergency procedures in Appendix H of NUREG-1556, Vol. 1, Rev. 1, dated November 2001.

The Operating Procedures state, in part, that licensee personnel always wear their assigned thermoluminescent dosimeter (TLD) or film badge when using the gauge.

Contrary to the above, on October 22, 2009, licensee personnel failed to always wear their assigned TLD or film badge when using the gauge. Specifically, an authorized user of the licensee was using a Troxler portable gauge at a temporary site on Highway 93 near Arlee, Montana, without wearing the required dosimeter.

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

- B. 10 CFR 71.5(a) requires, in part, that each licensee who transports licensed material outside of the site of usage, as specified in the NRC license, or where transport is on public highways, shall comply with the applicable requirements of the Department of Transportation (DOT) regulations in 49 CFR Parts 107, 171-180, and 390-397.

49 CFR 172.200(a) requires, in part, that each person who offers a hazardous material for transportation shall describe the hazardous material on the shipping paper in the manner required by this subpart. Pursuant to 49 CFR 172.101, radioactive material is classified as hazardous material.

1. 49 CFR 172.202(a)(1) requires, in part, that the shipping description of a hazardous material on the shipping paper must include the identification number prescribed for the material as shown in Column (4) of the 49 CFR 172.101 table.

Column (4) of the 49 CFR 172.101 table states, in part, that hazardous material described as radioactive material, Type A package, special form non fissile or fissile-excepted include the identification number UN3332.

ENCLOSURE 1

Contrary to the above, on October 23, 2009, the licensee offered a hazardous material for transportation and failed to describe the hazardous material on the shipping paper in the manner required by this subpart. Specifically, the shipping paper that accompanied the shipment did not include the correct identification number. The shipping paper used the identification number UN2974 instead of UN3332 as required for radioactive material, Type A package, special form non fissile or fissile-excepted.

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

2. 49 CFR 172.202(d)(5) requires, in part, that the shipping description of a hazardous material on the shipping paper must include the transport index assigned to each package in the shipment bearing RADIOACTIVE YELLOW-II or RADIOACTIVE YELLOW-III labels.

Contrary to the above, on October 23, 2009, the licensee offered a hazardous material for transportation and failed to describe the hazardous material on the shipping paper in the manner required by this subpart. Specifically, the shipping paper that accompanied the shipment did not include the correct transportation index. The shipping paper used a transportation index of 0.0 instead of 0.6.

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

Pursuant to the provisions of 10 CFR 2.201, State of Montana Department of Transportation, is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with a copy to the Regional Administrator, Region IV 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: (1) the reason for the violation or, if contested, the basis for disputing the violation or severity level, (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 was, or 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, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Because your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC's Web site at www.nrc.gov/reading-rm/pdr.html or www.nrc.gov/reading-rm/adams.html, to the extent possible, it should not include any personal privacy, proprietary or safeguards 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 withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (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).

In accordance with 10 CFR 19.11, you may be required to post this Notice within 2 working days.

Dated this 2nd day of December 2009