

U.S. Department of Labor

Mine Safety and Health Administration  
Pittsburgh Safety & Health Technology Center  
P.O. Box 18233  
Pittsburgh, PA 15236



Office of the Center Chief

July 7, 1997

U. S. Nuclear Regulatory Commission  
ATTN: Document Control Desk  
Washington, D.C. 20555

30-28859  
30-29592

SUBJECT: Reply to a Notice of Violation

Dear Sir:

On May 22, 1997, Mr. Steven R. Courtemanche, of the NRC's Region I, conducted an inspection of the activities authorized by NRC licenses 37-19392-02 and 37-19392-03 at our facility. The former license covers gas chromatographs, and the latter covers portable moisture-density gauges. As a result of the inspection, a "Notice of Violation" was issued with a letter, dated June 11, 1997, from Ms. Jenny M. Johansen, Chief, Nuclear Materials Safety Branch 3, Division of Nuclear Materials Safety. Four violations of NRC requirements were cited. This letter is our reply to that notice. The four violations, which were labeled as A, B, C, and D, are indicated below, along with our response.

- A. *Violation Cited:* An annual review of the radiation safety program was not performed for License No. 37-19392-02 in 1994, 1995, or 1996; and for License No. 37-19392-03 in 1996.

*Corrective steps taken:* For License No. 37-19392-03, the content and implementation of the safety program was reviewed by the Radiation Safety Officer (RSO) and a report, dated May 27, 1997, was sent to the Center Chief. A copy of this report is attached (Attachment 1).

A request to terminate License 37-19392-02 has been submitted to the NRC (Attachment 5). Once terminated, the annual review will not be required.

*Corrective steps to avoid a recurrence:* For License No. 37-19392-03, the RSO will review the radiation protection program, at least annually, and will document the findings.

Termination of license 37-19392-02.

*Date full compliance will be achieved:* For License No. 37-19392-03, compliance was achieved when the RSO reviewed the program and documented the findings in a memorandum dated May 27, 1997.

- B. *Violation Cited:* Under License No. 37-19392-03, placing other equipment around a gauge's transport case is an inadequate method of blocking and bracing a gauge to prevent movement during transportation.

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*Corrective steps taken:* As indicated by 49 CFR 177.842(d), "Packages must be so blocked and braced that they cannot change position during conditions normally incident to transportation." In response to the "Notice of Violation," the RSO has instructed gauge users that, from now on, the gauge transport case is to be tied-down (using straps, chain, or rope) so that it cannot move or change position during conditions incident to normal transport. Straps, chains, and rope are available for this purpose.

*Corrective steps to avoid a recurrence:* As indicate above, gauge users have all been instructed by the RSO not to transport a gauge without having it tied-down to prevent movement.

*Date full compliance will be achieved:* Compliance was achieved by verbal instructions from the RSO to all gauge users on May 27, 1997. Follow-up memoranda were issued to gauge users (Attachments 2, 3, and 4).

- C. *Violation Cited:* 10 CFR 31.5(a) requires, in part, that any person who acquires, receives, possesses, uses or transfers by product material in a device pursuant to another general licensee only where the device remains in use at a particular location. In such cases, the transferor shall, within 30 days of the transfer, report to the Director of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with the manufacturer's name, model number of the device transferred, the name and address of the transferee, and the name and/or position of a point of contact between the Commission and the transferee. Even though a transfer did not take place between the general licensees, the possession of generally-licensed devices did not remain at the same location.

*Corrective steps taken:* A letter was sent to the Director of Nuclear Materials Safety and Safeguards in Washington, D.C., and the Chief of Nuclear Materials Safety Branch 3 in Region 1. This letter included information about the disposal of a source from a Perkin Elmer Sigma Gas Chromatograph, as well as information on the address change. A copy of that letter is included (Attachment 5).

*Corrective steps to avoid a recurrence:* The Perkin Elmer equipment was the last to be covered by our general license. Both Perkin Elmer and Hewlett Packard have been informed of the current status of our inventory on their respective equipment. Copies of letters informing the companies identified are included (Attachments 6, 7, 8 and 9).

*Date full compliance will be achieved:*

- D. *Violation Cited:* Physical inventories were not conducted every six months. (Note that this violation is indicated as applying to License No. 37-19392-03. As confirmed in a telephone conversation with Mr. Courtemanche, on June 18, 1997, this violation only applied to License No. 37-19392-02.)

*Corrective steps taken:* a request on Form 317 has been submitted to the NRC to terminate license 37-19392-02. When this is completed, no inventory will be required. a copy of the request is included.

*Corrective steps to avoid a recurrence:* Termination of license 37-19392-02.

*Date full compliance will be achieved:* Compliance will be completed upon the action of the NRC on Form 314.

If you have any questions concerning our response, or require further information, please contact me.

Sincerely,



Edward J. Miller  
Chief, Pittsburgh Safety and Health Technology Center  
Mine Safety and Health Administration  
U.S. Department of Labor

Enclosure

cc: Regional Administrator  
Nuclear Regulatory Commission  
Region I  
475 Allendale Road  
King of Prussia, PA 19406-1415

## U.S. Department of Labor

Mine Safety and Health Administration  
Pittsburgh Safety & Health Technology Center  
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## Mine Waste and Geotechnical Engineering Division

May 27, 1997

MEMORANDUM FOR KELVIN K. WU

Acting Chief, Pittsburgh Safety and Health  
Technology Center

FROM:

JOHN W. FREDLAND *John W. Fredland*  
Acting Chief, Mine Waste and Geotechnical  
Engineering Division

SUBJECT:

Periodic review of NRC license and radiation  
protection program for nuclear density gauges

To continue to possess and use our nuclear density gauges, MSHA must comply with the requirements of our NRC license, as well as Parts 19 and 20 of Title 10 of the Federal Regulations. Section 20.1101 requires that "a licensee shall periodically (at least annually) review the radiation protection program content and implementation." As the designated radiation safety officer for our license, I have recently reviewed our license-related activities. This memorandum is to document my review findings.

1. The gauges located at Mt. Hope, West Virginia are under the on-site supervision of Mr. Harold Owens. The gauge in Vincennes, Indiana is under the on-site supervision of Mr. Michael Bird. Both of these gentlemen have done an excellent job of ensuring that we comply with our license requirements for the gauges at their locations.
2. Since the last review, Tara Earnest, Robert Barrish, Darren Blank, Michael Schumaker and Jarrod Durig all took the Troxler Radiation Safety Training. Each of these individuals took the training so that they will be familiar with gauge operation, and be aware of the safety precautions that should be taken whenever they might go to a site where either our gauge, or someone else's gauge, is being used. Since Mr. Joseph Janosik's retirement, the gauge at Bruceton has been primarily operated by Ronald Miles and Robert Barrish.

3. An inspection by the NRC on May 22, 1997 indicated no serious violations of our license requirements. However, the inspector did identify two discrepancies in our records. One was that we lacked a "Certificate of Competent Authority." Troxler is supposed to provide us with an up-to-date certificate but has been unable to do so because the certificates are no longer being issued by their source manufacturer. As indicated by the NRC inspector, this is considered only a technical violation since it is out of our control. The other discrepancy was that we did not have a record of an annual review of the radiation safety program for 1996. The purpose of this review, and this memorandum, is to provide a current, documented review of the program.
4. The NRC inspector advised that, although not specifically required by our license, gauges are not to be transported in the passenger compartment of an automobile, and if they must be transported behind the back seat of a four-wheel-drive vehicle, the gauge should be strapped in place so that it cannot move around. This point will be communicated to Mr. Owens and Mr. Bird. All gauge users will be instructed that, whenever possible the gauge should not be transported in the passenger compartment of a vehicle, and when it is necessary to transport a gauge in the back of a four-wheel-drive vehicle, steps must be taken to ensure that the gauge will be securely held in place.
5. Regulations contained in 49 CFR Part 172, Subpart H require that persons who transport radioactive materials receive certain training. The original regulation required that this training be given every two years. This requirement has now been revised to require training every three years. This means that the persons covered under our license will not need to be retrained on Subpart H until September, 1998.

As you know, our gauges are not used very frequently. From my review, it appears that we are storing, transporting, and using the gauges in a safe manner and are in compliance with our license requirements.

cc: Files



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Mine Waste and Geotechnical Engineering Division

June 19, 1997

MEMORANDUM FOR ALL MINE WASTE DIVISION PERSONNEL

FROM: JOHN W. FREDLAND *John W. Fredland*  
Acting Chief, Mine Waste and Geotechnical  
Engineering Division

SUBJECT: Requirements for securing moisture-density gauge  
case during transportation

As you know, we have a license with the Nuclear Regulatory Commission (NRC) for the possession and use of portable moisture-density gauges. This license covers the gauge at Bruceton, as well as the gauges kept in Districts 4 and 8. On May 22, 1997, the NRC made an unannounced inspection, at Bruceton, of the activities under our license. One finding of that inspection was that, according to the NRC, the method we have been using to prevent a gauge case from shifting, while being transported in a vehicle, is inadequate. The purpose of this memorandum is to provide instructions on how gauge cases must be secured during transportation.

The regulations of the Department of Transportation apply when a gauge is transported in a vehicle. Specifically, 49 CFR 177.842(d) requires that "Packages must be so blocked and braced that they cannot change position during conditions normally incident to transportation." According to the NRC inspector, our method of using such objects as sample cans, mine bags, and other equipment, to restrain and brace the gauge case, is inadequate. According to the NRC, we need to tie-down the gauge case, using something like straps, chains, cable or rope.

As the Radiation Safety Officer for our license, it is my responsibility to ensure that our activities comply with the requirements of our license, and the applicable regulations. Therefore, from now on, anytime you are involve with transporting the gauge, please ensure that the gauge case is firmly secured against shifting by tying it down with straps, chains, cable or rope. To make it more convenient to properly secure the transport case, we are making arrangements to purchase a set of ratchet tie-downs.

Thank you for your cooperation and assistance in this matter.

cc: Files

## 3. Department of Labor

Mine Safety and Health Administration  
Pittsburgh Safety & Health Technology Center  
P.O. Box 18233  
Pittsburgh, PA 15236



Mine Waste and Geotechnical Engineering Division

June 19, 1997

MEMORANDUM FOR HAROLD L. OWENS

Supervisory Civil Engineer, Coal Mine Safety and Health, District 4

THROUGH:

EARNEST C. TEASTER, JR.

District Manager

Coal Mine Safety and Health, District 4

KELVIN K. WU *K.W.*

Acting Chief, Pittsburgh Safety and Health Technology Center

FROM:

JOHN W. FREDLAND *John W. Fredland*

Acting Chief, Mine Waste and Geotechnical Engineering Division

SUBJECT:

Requirements for securing moisture-density gauge case during transportation

As you know, the moisture-density gauges that District 4 maintains at Mt. Hope are covered under our license (No. 37-19392-03) with the Nuclear Regulatory Commission (NRC). On May 22, 1997, the NRC made an inspection, at Bruceton, of the activities under this license. One finding of that inspection was that, according to the NRC, the method we have been using to prevent shifting of the gauge case, while it is being transported in a vehicle, is inadequate. The purpose of this memorandum is to provide instructions on how gauge cases must be secured during transportation.

The regulations of the Department of Transportation apply when a gauge is transported in a vehicle. Specifically, 49 CFR 177.842(d) requires that "Packages must be so blocked and braced that they cannot change position during conditions normally incident to transportation." According to the NRC inspector, our method of using such objects as sample cans, mine bags, and other equipment, to restrain and brace the gauge in the back of a vehicle, is inadequate. According to the NRC, we need to tie-down the gauge transport case, using something like straps, chains, cable or rope.

As the Radiation Safety Officer for our license, it is my responsibility to ensure that our activities comply with the requirements of our license, and the applicable regulations. Therefore, from now on, anytime District 4 personnel are involved with transporting one of your gauges in a vehicle, please ensure that the case is firmly secured against shifting, by tying it down with straps, chains, cable or rope. When we discussed this issue on June 18, 1997, you indicated that you didn't foresee any problem in complying with this requirement.

Thank you for your cooperation and assistance in this matter. I appreciate the work that you have done to help ensure that we store, transport, and use the gauges in a safe manner.

cc: Files



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## Mine Waste and Geotechnical Engineering Division

June 19, 1997

MEMORANDUM FOR MARK O. ESLINGER

Supervisory Mining Engineer, Coal Mine Safety and  
Health, District 8

## THROUGH:

JAMES K. OAKES

District Manager, Coal Mine Safety and Health,  
District 8

KELVIN K. WU *K.Wu*

Acting Chief, Pittsburgh Safety and Health  
Technology Center

## FROM:

JOHN W. FREDLAND *John W. Fredland*

Acting Chief, Mine Waste and Geotechnical  
Engineering Division

## SUBJECT:

Requirements for securing moisture-density gauge  
case during transportation

As you know, the moisture-density gauge that District 8 maintains in Vincennes is covered under our license (No. 37-19392-03) with the Nuclear Regulatory Commission (NRC). On May 22, 1997, the NRC made an unannounced inspection, at Bruceton, of the activities under this license. One finding of that inspection was that, according to the NRC, the method we have been using to prevent a gauge case from shifting, while being transported in a vehicle, is inadequate. The purpose of this memorandum is to provide instructions on how gauge cases must be secured during transportation.

The regulations of the Department of Transportation apply when a gauge is transported in a vehicle. Specifically, 49 CFR 177.842(d) requires that "Packages must be so blocked and braced that they cannot change position during conditions normally incident to transportation." According to the NRC inspector, our method of using such objects as sample cans, mine bags, and other equipment, to restrain and brace the gauge in the back of a vehicle, is inadequate. According to the NRC, we need to tie-down the gauge's transport case, using something like straps, chains, cable or rope.

As the Radiation Safety Officer for our license, it is my responsibility to ensure that our activities comply with the requirements of our license, and the applicable regulations. Therefore, from now on, anytime District 8 personnel are involved with transporting your gauge in a vehicle, please ensure that the gauge's case is firmly secured against shifting by tying it down with straps, chains, cable or rope. I discussed this issue with Michael Bird on June 18, 1997, and he said that he didn't foresee any problems in complying with this requirement.

Thank you, and Michael Bird, for your cooperation and assistance in this matter. I appreciate the work that the both of you have done to help ensure that we store, transport, and use the gauge in a safe manner.

cc: M. Bird  
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