



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION IV  
1600 EAST LAMAR BOULEVARD  
ARLINGTON, TEXAS 76011-4511

February 12, 2021

EA-21-015

David Barrick, PE  
Radiation Safety Officer  
DOWL LLC  
65 East Broadway, Suite 400  
Butte, MT 59701

SUBJECT: NRC INSPECTION REPORT 030-12845/2021-001; EXERCISE OF  
ENFORCEMENT DISCRETION; AND NOTICE OF VIOLATION

Dear Mr. Barrick:

This letter refers to the announced routine inspection that was conducted remotely from January 8 to 28, 2021. The inspection was an examination of activities conducted under your license as they relate to public health and safety, and security of licensed materials, to confirm compliance with the U.S. Nuclear Regulatory Commission's (NRC's) rules, regulations, and with the conditions of your license. Within these areas, the inspection consisted of a selected examination of procedures and representative records, and interviews with personnel. A final exit briefing was conducted telephonically with you on February 8, 2021.

A violation of Title 10 of the *Code of Federal Regulations* (10 CFR) 30.34(c) was identified during this inspection and is described in the attached Notice of Violation (Notice). The violation was related to the possession of a portable nuclear gauge that was not authorized on the NRC license. In accordance with the NRC Enforcement Policy, this violation would normally be categorized at Severity Level III and considered for escalated enforcement action. The NRC Enforcement Policy can be found at the NRC's website at <https://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. However, in accordance with NRC Enforcement Guidance Memorandum (EGM) 20-003, "Interim Guidance for Dispositioning Violations of Licensed Material Possession and Use Limits," (ADAMS Accession number ML20156A340) issued July 15, 2020, the NRC is exercising enforcement discretion to categorize this violation as a Severity Level IV violation.

In addition to the violation described above, one Severity Level IV violation was identified related to the failure to transport a portable nuclear gauge in an approved transportation container. The violation was evaluated in accordance with the NRC Enforcement Policy and categorized as a Severity Level IV violation.

The two Severity Level IV violations are cited in the enclosed Notice because they were identified by the NRC during the inspection.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The guidance in NRC Information

Notice 96-28, "Suggested Guidance Relating to Development and Implementation of Corrective Action," may be helpful in preparing your response. You can find the Information Notice on the NRC website at: <https://www.nrc.gov/reading-rm/doc-collections/gen-comm/info-notices/1996/in96028.html>. Information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance will be (was) achieved should be addressed. The NRC review of your response to the Notice will also determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

To the extent possible, your response should not include any personal privacy or proprietary 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, 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 information, 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 2.390 of the NRC's "Agency Rules of Practice and Procedure," 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 Agencywide Documents Access and Management System (ADAMS), accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html>.

Should you have any questions regarding this letter or the enclosed Notice, please contact Dr. Janine F. Katanic, CHP, at (817) 200-1151, or the undersigned at (817) 200-1455.

Sincerely,

Daniel Bradley, Chief  
Materials Inspection Branch  
Division of Nuclear Materials Safety

License No.: 25-17492-01  
Docket No.: 030-12845

Enclosure:  
Notice of Violation (Notice)

cc w/Enclosure:  
Carter Anderson, Administrator  
Department of Public Health and  
Human Services  
2401 Colonial Drive  
P.O. Box 202953  
Helena, MT 59620-2953

NRC INSPECTION 030-12845/2021-001; EXERCISE OF ENFORCEMENT DISCRETION; AND NOTICE OF VIOLATION – DATED February 12, 2021

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## NOTICE OF VIOLATION

DOWL LLC  
Butte, Montana

Docket No.: 030-12845  
License No.: 25-17492-01  
EA-21-015

During an NRC inspection conducted during January 8 - 28, 2021, two violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 30.34(c) requires, in part, that each person licensed by the Commission shall confine his possession and use of the byproduct material to the locations and purposes authorized in the license.

License Conditions 6.A. through F. - 9.A. through F., NRC license 25-17492-01, Amendment No. 29, dated June 10, 2019, authorized the possession and use of Troxler Electronic Laboratories Model 3400 Series; Troxler Electronic Laboratories Model 3411-B; and Instrotek, Inc., Model 3500 portable nuclear gauging devices.

Contrary to the above, from June 10, 2019, to January 8, 2021, the licensee failed to confine his possession and use of byproduct material to the purposes authorized in the license. Specifically, the licensee failed to comply with the limits specified in License Conditions 6.A. through F. - 9.A. through F., NRC license 25-17492-01, Amendment No. 29, dated June 10, 2019. The licensee possessed a Troxler Electronic Laboratories Model 2401, which was not authorized in NRC license 25-17492-01, Amendment No. 29, dated June 10, 2019.

This is a Severity Level IV violation (NRC Enforcement Guidance Memorandum 20-003).

- B. 10 CFR 71.5(a) requires, in part, that each licensee who transports licensed material on public highways shall comply with the applicable requirements of the U.S. Department of Transportation (DOT) regulations in 49 CFR Parts 171 through 180 appropriate to the mode of transport.

49 CFR 173.415(a)(2) requires, in part, that a DOT Specification 7A Type A general packaging is authorized for shipment if they do not contain quantities exceeding A<sub>1</sub> or A<sub>2</sub> as appropriate. Each offeror of a Specification 7A package must maintain on file for at least two years after the offeror's latest shipment, if the offeror has obtained the packaging from a packaging manufacturer, a certification from the packaging manufacturer that the package meets all the requirements of 49 CFR 178.350 for the radioactive contents presented for transport and a copy of documents maintained by the packaging manufacturer that meet the requirements of 49 CFR 173.415(a)(1).

Contrary to the above, in December 2017, the licensee transported licensed material, on public highways, in a package obtained from a packaging manufacturer, and failed to maintain on file for at least two years after the offeror's latest shipment, a certification from the packaging manufacturer that the package meets all the requirements of 49 CFR 178.350 for the radioactive contents presented for transport and a copy of documents maintained by the packaging manufacturer that meet the requirements of 49 CFR 173.415(a)(1). Specifically, on one occasion in December 2017 (exact date could not be established), the licensee transported, on public

Enclosure

highways in Montana, a portable nuclear gauge containing licensed material (Troxler Model 2401, serial number 929) in a package obtained from a packaging manufacturer and failed to maintain on file a certification from the packaging manufacturer that the package meets all the requirements of 49 CFR 178.350. The portable nuclear gauge was transported, in a transportation container constructed of wood, that the package manufacturer did not re-certify as a DOT Specification 7A Type A general packaging after January 1, 2017, and was therefore no longer authorized for the transportation of licensed material.

This is a Severity Level IV violation (NRC Enforcement Policy, Section 6.8.d.5).

Pursuant to 10 CFR 2.201, DOWL LLC, 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 Director, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission Region IV, 1600 E. Lamar Blvd., Arlington, Texas 76011, and emailed to [R4Enforcement@nrc.gov](mailto:R4Enforcement@nrc.gov) 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; EA-21-015" and should include, for each violation: (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; 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, the NRC may issue an order or a demand for information requiring you to explain why your license should not be modified, suspended, or revoked, or why the NRC should not take other action as may be proper. Consideration may be given to extending the response time for good cause shown.

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.

Your response will be made available electronically for public inspection in the NRC Public Document Room or in the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html>. Therefore, to the extent possible, the response should not include any personal privacy or proprietary 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 of receipt.

Dated this 12<sup>th</sup> day of February 2021