



March 3, 2021

Janine F. Katanic, PhD, CHP  
United States Nuclear Regulatory Commission  
1600 East Lamar Boulevard  
Arlington, TX 76011-4511

Subject: Response to NRC Inspection Report 030-12845/2021 – 001;  
Exercise of Enforcement Discretion; and Notice of Violation

Dear Ms. Katanic:

From January 8 to 28, 2021, DOWL coordinated with the United States Nuclear Regulatory Commission (U.S. NRC) regarding annual inspections to fulfill the requirements of License 25-14492-01. DOWL and the U.S. NRC performed this inspection virtually via Microsoft Teams. On February 16, 2021, the Materials Inspection Branch under the Division of Nuclear Materials Safety informed DOWL of a Notice of Violation (Severity Level IV) regarding these two items:

1. 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.

2. 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 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.

In response to these two violations, DOWL has performed or will perform the following tasks.

1. On January 11, 2021, David Barrick, DOWL's RSO, sent an email to Carol Hill, Licensing Assistant for the U.S. NRC requesting the following amendments to DOWL's License 25-14492-01:
  - a. Remove seven storage locations from the license and list just four permanent storage locations. These locations are:
    - i. Butte, Montana
    - ii. Billings, Montana
    - iii. Juneau, Alaska
    - iv. Sheridan, Wyoming
  - b. The address of the license should be 65 East Broadway, Suite 400, Butte, Montana, 59701.
  - c. Include a portable gauging device (Troxler Model 2401) on the license.
    - i. **On February 17, 2021, Carol Hill of the US NRC responded to this request and updated the license with Amendment 30. Amendment 30 is now stored on DOWL's X-Drive server. Therefore, DOWL's License 25-14492-01 is now current and no longer in violation.**
2. In December 2017, DOWL transported Troxler Model 2401, serial number 929, in its original packaging container from Great Falls to Butte due to the closure of DOWL's Great Falls office. This wood transportation container no longer meets DOT Specification 7A Type A general packaging regulations.
  - i. **DOWL has since posted the wooden transportation container to prohibit its use for transportation (see photo below). DOWL will not**

**transport the Troxler Model 2401, serial number 929, unless and until a DOT certified transportation container is purchased. DOWL is planning on hiring a certified contractor to dispose the Troxler Model 2401 upon approval of funding.**



Sincerely,  
DOWL

A handwritten signature in cursive script that reads "David J. Barrick".

David J. Barrick, P.E., R.S.O.  
Geotechnical Engineer