

## NUCLEAR REGULATORY COMMISSION

[Docket No. 030-19135; License No. 29-19707-01; EA No. 01-314]

### In the Matter of Trap Rock Industries, Kingston, New Jersey; Order Imposing a Civil Monetary Penalty

#### I

Trap Rock Industries (Licensee) is the holder of Byproduct Materials License No. 29-19707-01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) on July 24, 1991. The License was most recently renewed by the Commission on September 22, 1994. The License authorizes the Licensee to possess and use certain byproduct materials in accordance with the conditions specified therein at their facility in Kingston, New Jersey and at various temporary job sites.

#### II

An inspection of the Licensee's activities was conducted on December 6, 2001, at the Licensee's facility located in Kingston, New Jersey. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated February 27, 2002. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for one of the violations.

The Licensee responded to the Notice in a letter, dated March 26, 2002. In its response, the Licensee does not deny that the violations occurred as stated in the Notice, but requests withdrawal of the penalty.

#### III

After consideration of the Licensee's response and the statements of fact, explanation, and argument contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that an adequate basis was not provided for withdrawal of the penalty and that a penalty of \$3,000 should be imposed.

#### IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered that:*

The Licensee pay a civil penalty in the amount of \$3,000 within 30 days of the date of this Order, in accordance

with NUREG/BR-0254. In addition, at the time of making the payment, the Licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

#### V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Associate General Counsel for Hearings, Enforcement & Administration at the same address, and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

Whether on the basis of the violations admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland, this 30th day of April, 2002.

For the Nuclear Regulatory Commission.

**Frank J. Congel,**

*Director, Office of Enforcement.*

### Appendix

#### Evaluations and Conclusion

On February 27, 2002, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for two violations identified during a NRC inspection conducted at the Licensee's facility located in Kingston, New Jersey, as well as temporary job sites in Ewing, New Jersey. The penalty

was issued for one violation. The Licensee responded to the Notice in a letter, dated March 26, 2002. While in its response, the Licensee does not deny that the violations occurred as stated in the Notice, the Licensee does request withdrawal of the civil penalty. The NRC's evaluation and conclusion regarding the Licensee's request is as follows:

#### 1. Restatement of Violation Assessed a Civil Penalty

10 CFR 20.1801 requires that the Licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. 10 CFR 20.1802 requires that the Licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, *controlled area* means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the Licensee for any reason; and *unrestricted area* means an area, access to which is neither limited nor controlled by the Licensee.

Contrary to the above, on October 24, 2001, the Licensee did not secure from unauthorized removal or limit access to a Troxler Model 4640-B density gauge (containing one 8-millicurie cesium-137 source) located at a temporary job site on Route 31 in Ewing, New Jersey, which is an unrestricted area, nor did the Licensee control and maintain constant surveillance of this licensed material.

#### 2. Summary of Licensee's Request for Withdrawal of the Civil Penalty

The Licensee, in its response, requests that the civil penalty be withdrawn. In support of this request, the Licensee contends that (1) the violation should be considered minor; and (2) extenuating circumstances exist that should eliminate the need for a civil penalty.

With respect to the significance of the violation, the Licensee indicates that there was no actual safety significance to the violation; the potential consequences were de minimus; the loss of the gauge did not impact the NRC's ability to perform its regulatory functions; and the loss of the gauge was not willful. The Licensee also states that using the standards set forth in the enforcement policy for assigning severity, the violation, "at best," should be classified at Severity Level III. However, the Licensee also argues that using the guidance set forth in Section E of Supplement IV of the enforcement policy, the violation could be considered minor because the amount of radioactivity that could be given off by this 8 millicurie cesium-137 gauge was approximately that of an x-ray.

With respect to the extenuating circumstances, the Licensee argues that the penalty should be withdrawn because the gauge contained minuscule quantities of material, was clearly and properly labeled, and was lost due to a criminal act of an unknown third party; upon discovery that the gauge was missing, the Licensee immediately notified the NRC of the theft and attempted to find the stolen gauge; the Licensee disciplined the employee who left the gauge unattended, and also took

corrective actions that included re-instructing and re-training its employees; and the Licensee has had no prior violations of NRC regulations.

The Licensee also argues that none of the rationales set forth in the enforcement policy for issuing a penalty are applicable in this case. Specifically, the Licensee indicates that the penalty will not encourage prompt identification and prompt corrective action because the Licensee had already identified and corrected the violations. The Licensee also states that the penalty will not deter future violations because the theft of the radioactive device was the result of a criminal act by a third party. Finally, the Licensee maintains that the penalty will not focus the Licensee's attention on significant violations because the Licensee believes that the violation was insignificant.

### 3. NRC Evaluation of Licensee's Request for Withdrawal of the Civil Penalty

Notwithstanding the Licensee's contentions regarding the significance of the violation, the NRC maintains that the violation was appropriately classified at Severity Level III, consistent with the NRC enforcement policy. Since the gauge contained less than 1000 times the quantity of cesium-137 set forth in 10 CFR Part 20, Appendix C (the gauge contained approximately 800 times that quantity), the failure to secure the gauge and maintain surveillance over it might have been classified at Severity Level IV, in accordance with Section C.11 of Supplement IV of the enforcement policy, had the gauge not been stolen. However, since the failure to secure or maintain constant surveillance over the gauge, resulted in the gauge being stolen and radioactive material entering the public domain and being handled by members of the public, the violation is more appropriately classified at Severity Level III. Such violations are considered significant since, although the source is normally shielded within the gauge, significant radiation exposures could occur if the source becomes unshielded while in the public domain.

The NRC agrees that the gauge was properly labeled, the Licensee took appropriate actions once it discovered that the gauge was missing, the violation was not willful, and the Licensee's prior enforcement history has been good. As a result, consistent with the NRC enforcement policy, a civil penalty would not normally be warranted for a Severity Level III violation, as the NRC indicated in its February 27, 2002 letter transmitting the civil penalty. However, although the outcome of the normal civil penalty process in this case would not result in a civil penalty, a civil penalty is warranted, in accordance with Section VII.A.1.g of the enforcement policy since the case involved a loss/improper disposal of a sealed source. The Commission included Section VII.A.1.g. in the policy since it believes that normally issuance of a civil penalty is appropriate for cases involving loss of a sealed source or device. This is necessary to properly reflect the significance of such violations.

Although the loss of the gauge was due to the criminal act of a third party, the Licensee

is responsible for that occurrence since the gauge user left the gauge unattended and unsecured, which directly contributed to the theft. Accordingly, issuance of the violation, categorization of the violation at Severity Level III, and imposition of the related civil penalty, is appropriate in this case, and consistent with the NRC enforcement policy.

### 4. NRC Conclusion

The NRC has concluded that the Licensee did not provide an adequate basis for withdrawal of the civil penalty. Accordingly, the proposed civil penalty in the amount of \$3,000 should be imposed.

[FR Doc. 02-11872 Filed 5-10-02; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Joint Meeting of the ACRS Subcommittees on Materials and Metallurgy, on Thermal-Hydraulic Phenomena, and on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittees on Materials and Metallurgy, on Thermal-Hydraulic Phenomena, and on Reliability and Probabilistic Risk Assessment will hold a joint meeting on May 31, 2002, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Friday, May 31, 2002—8:30 a.m. until the conclusion of business.*

The Subcommittees will continue their review of the proposed risk-informed revisions to the technical requirements of the Emergency Core Cooling Systems Rule (10 CFR 50.46 and Appendix K). The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the Designated Federal Official, Mr. Paul A. Boehnert (telephone 301-415-8065) between 7:30 a.m. and 5 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda that may have occurred.

Dated: May 7, 2002.

**Sher Bahadur,**

*Associate Director for Technical Support, ACRS/ACNW.*

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## NUCLEAR REGULATORY COMMISSION

### Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision of a guide in its Regulatory Guide Series. Regulatory Guides are developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is temporarily identified by its task number, DG-1118, which should be mentioned in all correspondence concerning this draft guide. Draft Regulatory Guide DG-1118, the Proposed Revision 1 of Regulatory Guide 1.53, "Application of the Single-Failure Criterion to Safety Systems," is being developed to describe a method acceptable to the NRC staff for complying with the NRC's regulations with respect to satisfying the single-failure criterion for safety systems.