



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET SW SUITE 23T85
ATLANTA, GEORGIA 30303-8931

June 30, 2000

EA-00-119

Burning Rock Coal Company
ATTN: Mr. Lawrence J. Trainor, Jr.
President
609 Club Circle
Daniels, West Virginia 25832

SUBJECT: NOTICE OF VIOLATION (NRC OFFICE OF INVESTIGATIONS REPORT
NO. 2-98-018)

Dear Mr. Trainor:

This is in reference to an investigation initiated by the Nuclear Regulatory Commission (NRC) Office of Investigations (OI) on November 3, 1999, to determine whether Burning Rock Coal Company operated a fixed gauge (coal ash analyzer), containing licensed material, without a license issued by the NRC. The synopsis to the OI report, a description of the apparent violation, and a summary of the OI investigation were formally transmitted to you by letter dated May 11, 2000. That letter also afforded you the opportunity to attend a predecisional enforcement conference to discuss the apparent violation, the root causes, and your corrective actions to preclude recurrence. During a telephone conversation with Mr. Mark Lesser of my staff on May 15, 2000, you indicated that you would respond to the apparent violation in writing in lieu of participating in a predecisional enforcement conference.

By letter dated May 31, 2000, you responded to the apparent violation. In your response you admitted that you willfully and deliberately operated a fixed gauging device without a specific or general license issued by the NRC. We have reviewed your response and have concluded that sufficient information is available to determine the appropriate enforcement action in this matter.

Based on the OI investigation and the information you provided in your letter, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and described in detail in our letter dated May 11, 2000. The violation involves the deliberate operation of a fixed gauging device containing 20 millicuries of cesium-137 and 300 millicuries of americium-241 without a specific or general license issued by the NRC, contrary to the requirements of 10 CFR 30.3. Specifically, between July 8 and August 10, 1999, Burning Rock Coal Company possessed and used byproduct material by operating a coal ash analyzer located at Bass Energy, Inc.'s Deep Coal Mine No. 1 without a specific or general license from the NRC authorizing the use or possession of such a device.

The NRC is responsible for protecting the health and safety of the public and its licensees through the licensing of nuclear byproduct material. Obtaining a nuclear byproduct material license and adherence to license and other regulatory requirements provides the NRC with the opportunity to review and approve qualifications and procedures and conduct inspections to ensure that licensees are safely using licensed material. By violating 10 CFR 30.3, you denied us this opportunity. In addition, you were aware of the requirement to obtain an NRC license prior to conducting licensed activities and you deliberately did not take appropriate actions to comply with regulatory requirements. During an OI interview on February 29, 2000, you acknowledged the failure to complete the license application and stated that completing the license application became secondary to the mining operation. Based on these facts and your admission, the NRC concluded that the violation was deliberate. Deliberate violations of regulatory requirements are of significant concern to the NRC because the success of our regulatory programs is based in no small part on honesty and integrity. Therefore, in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, the violation described in the enclosed Notice has been categorized at Severity Level II.

I have been authorized, after consultation with the Director of the Office of Enforcement to issue the enclosed Notice for the Severity Level II violation to emphasize the importance of your responsibilities in complying with the NRC's licensing process and the significance of deliberate violations. While we could have taken more stringent enforcement action, we have not done so in recognition that at the time the violation occurred, you were not an NRC licensee and may not have had a full appreciation for NRC regulations, the regulatory process, and the implication of noncompliance.

The NRC has concluded that information regarding the reasons for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the dates when full compliance was achieved are addressed on the docket in the NRC's Proposed Enforcement Conference Arrangement letter (NRC Office of Investigations Report No. 2-98-018) dated May 11, 2000, in your response to the apparent violation dated May 31, 2000, and this letter. In addition, during discussions with the NRC you indicated that you have no intention of engaging in NRC regulated activities in the future. Therefore, no additional information is required from you regarding the violation, and you are not required to respond to this letter unless the description herein does not adequately reflect your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and any response you provide will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of

L. Trainor

3

NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room).

Sincerely,

/RA/

Luis A. Reyes
Regional Administrator

Enclosure: Notice of Violation

cc w/encl:
State of West Virginia

Distribution w/encl :

WBorchardt, OE
 SMerchant, OE
 WTravers, EDO
 FMiraglia, DEDR
 LChandler, OGC
 JGoldberg, OGC
 CPaperiello, DEDMRS
 DCool, NMSS
 BSmith, NMSS
 WKane, NMSS
 EJulian, SECY
 BKeeling, OCA
 Enforcement Coordinators
 RI, RIII, RIV
 OE:EA File (BSummers) (2letterhead)
 EHayden, OPA
 GCaputo, OI
 HBell, OIG
 CEvans, RII
 DCollins, RII
 MLesser, RII
 RGibson, RII
 KClark, RII
 ABoland, RII

SEND TO PUBLIC DOCUMENT ROOM? YES								
OFFICE	RII:DNMS	RII:EICS	RII:ORA	OE	ORA	DEDMRS	NMSS	OGC
Signature	/RA/	/RA/	/RA/	SM for	/RA/		SG for	SM for
NAME	DCollins	ABoland	CEvans	RWBorchardt	BMallett	CPaperiello	JHickey	MYoung
DATE	/ /00	/ /00	/ /00	06/ /00	/ /00	06/ /00	06/ 26 /00	06 /27 /00
COPY?	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO

OFFICIAL RECORD COPY DOCUMENT NAME:C:\burningrock-nov.wpd

NOTICE OF VIOLATION

Notice of Violation

Burning Rock Coal Company
Daniels, West Virginia

EA-00-119

During an NRC Office of Investigations investigation initiated on November 3, 1999, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," NUREG-1600, the violation is listed below:

10 CFR 30.3 requires, in part, that except for persons exempted, no person shall receive, acquire, own, possess, or use byproduct material except as authorized by a specific or general license issued pursuant to Title 10, Chapter I, Code of Federal Regulations.

Contrary to the above, between July 8 and August 10, 1999, Burning Rock Coal Company willfully and deliberately possessed and used byproduct material by operating a fixed gauge (coal ash analyzer) containing 20 millicuries of cesium-137 and 300 millicuries of americium-241, without a specific or general license issued pursuant to NRC regulations. (01013)

This is a Severity Level II violation (Supplements VI and VII).

The NRC has concluded that 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 was achieved is already adequately addressed on the docket in the NRC's Proposed Enforcement Conference Arrangement letter (NRC Office of Investigations Report No. 2-98-018) dated May 11, 2000, in your response to the apparent violation dated May 31, 2000, and the cover letter transmitting this Notice. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description herein does not accurately reflect your position. In that case, or if you chose to respond, clearly mark your response as a "Reply to a Notice of Violation," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, Region II, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

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.

Under the authority of Section 182 of the Act, 42 U.S.C. 2232, any response shall be submitted under oath or affirmation.

If you choose to respond, your response will be made publicly available. Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room).

Dated this 30th day of June 2000

Enclosure

Notice of Violation

Atlanta, Georgia

Enclosure