



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

December 31, 2002

CAL No. 02-02-006

Pen Virginia Operating Company
ATTN: James Corsaro, Vice President
Suite 100
1 Carbon Center
Chesapeake, WV 25315

SUBJECT: CONFIRMATORY ACTION LETTER

Dear Mr. Corsaro:

This letter is based on a special inspection conducted on November 22, 2002, by a representative of the Nuclear Regulatory Commission (NRC) at your Alum Creek, West Virginia facility. The purpose of the inspection was to evaluate the status of radioactive material at the facility.

Pursuant to conversations between you, and Mr. Ken Barr of this office, held on December 31, 2002, it is our understanding that you have taken (or will take) the following actions (which will be completed by the dates specified):

1. By January 9, 2003, you will secure the ThermoGammametrics gauge, containing radioactive material, at the Fork Creek Mine to prevent inadvertent radiation exposure to personnel and to prevent theft. The location of the gauge is to be posted with standard radiation warning signs to alert personnel of the presence of radiation. If the device has a shutter, it is to be locked in the closed position and the key controlled to prevent unauthorized manipulation of the shutter. At least weekly, you will verify the gauge has not been removed from its installed position.
2. You will not place this device in service until you receive a license from the NRC authorizing its possession and use.
3. By January 15, 2003, you will forward the results of the last leak test of the device to this office.
4. No later than January 17, 2003, one of your employees will complete formal training to become an authorized user and Radiation Safety Officer for the safe use of the source and device.
5. No later than February 17, 2003, you will file, with this office, an application for a license to possess and use the device.

Pursuant to Section 182 of the Atomic Energy Act, 42 U.S.C. 2232, you are required to:

1. Notify me immediately if your understanding differs from that set forth above;
2. Notify me if for any reason you cannot complete the actions within the specified schedule and advise me in writing of your modified schedule in advance of the change; and,
3. Notify me in writing when you have completed the actions addressed in this Confirmatory Action Letter.

Issuance of this Confirmatory Action Letter does not preclude issuance of an order formalizing the above commitments or requiring other actions on the part of the licensee; nor does it preclude the NRC from taking enforcement action for violations of NRC requirements that may have prompted the issuance of this letter. In addition, failure to take the actions addressed in this Confirmatory Action Letter may result in enforcement action.

In accordance with 10 CFR 2.790 of NRC's "Rules of Practice," a copy of this letter will be available electronically for public inspection in NRC's 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/reading-rm/ADAMS.html> (the Public Electronic Reading Room).

Sincerely,

/RA/

Douglas M. Collins, Director
Division of Nuclear Materials Safety

OFFICE	RII:DNMS	RII:DNMS	RII:EICS				
SIGNATURE	/RA/	/RA/	/RA/				
NAME	AMiller	JLHenson	CFEvans				
DATE	12/31/02	12/31/02	12/31/02	1/ /2003	1/ /2003	1/ /2003	1/ /2003
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