



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

October 1, 2003

EA-03-161

CONSOL Energy Inc.
ATTN: Joseph M. Richards
Corporate Safety Department
Consol Plaza
1800 Washington Road
Pittsburgh, PA 15241-1421

**SUBJECT: NRC INSPECTION REPORT NO. 999-90002/03-01 AND EXERCISE OF
ENFORCEMENT DISCRETION**

Dear Mr. Richards:

This letter refers to our final review of the apparent violation identified in NRC Inspection Report No. 999-90002/03-01. The report was issued on July 17, 2003, and documented our inspection of the circumstances surrounding the loss of a generally-licensed industrial gauge containing approximately 325 millicuries of Cesium-137. The gauge was located at your Buchanan Mine Preparation Plant in Mavisdale, Virginia. Although you identified the loss on, or about, June 6, 2003, it was not reported to the NRC Operations Center and the Region II Office until June 11, 2003.

Based on our further review, we have determined that violations of 10 CFR 31.5(c)(8)(i) and 10 CFR 20.2201(a)(i) occurred involving the unauthorized transfer or disposal of licensed material, and the failure to make an immediate report of the loss when it became known that the device was missing. Although violations of 10 CFR 31.5 and 20.2201 were identified, the NRC has concluded that the exercise of enforcement discretion is appropriate in this case, in accordance with the NRC Interim Enforcement Policy for Generally Licensed Devices Containing Byproduct Material, as discussed in the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600. Discretion is warranted because your actions were not willful, you identified and reported the lost device to the NRC (even though the report was late), and took appropriate corrective action to address the violation and prevent recurrence of similar problems. Therefore, we are not issuing any enforcement action for this violation. However, any future violations of 10 CFR 31.5 or 10 CFR 20.2201 may be considered for enforcement action.

No response to this letter is required. In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter will be made 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).

CONSOL Energy Inc.

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Should you have any questions concerning this letter, please contact Douglas Collins, Director, Division of Nuclear Materials Safety, at (404) 562-4700.

Sincerely,

/RA/ LRP for

Luis A. Reyes,
Regional Administrator

Docket No. General License (10 CFR 31.5)
License No. 999-90002

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