



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-4005**

April 7, 2006

Rusty Lasell, Radiation Safety Officer
Usibelli Coal Mine, Inc.
P.O. Box 1000
Healy, Alaska 99743

SUBJECT: NRC INSPECTION REPORT 030-36755/06-001 AND NOTICE OF VIOLATION

Dear Mr. Lasell:

This letter refers to the inspection conducted on February 15, 2006, at your facility located in Healy, Alaska. The inspection reviewed activities conducted under your license 50-27794-01 as they relate to radiation safety and compliance with the Commission's rules and regulations and with the conditions of your license. Within these areas, the inspection consisted of selected examination of procedures and representative records and interviews with personnel. In addition, activities under the general license authorized in 10 CFR 31.5 were performed. Within these areas, the inspection consisted of selected examination of records and interviews with personnel regarding activities involving the generally licensed nuclear devices that were in storage at the time of the inspection. Preliminary inspection findings were discussed with you at the conclusion of the onsite portion of the inspection. A final telephonic exit briefing was conducted with you, on March 8, 2006.

Within the scope of this inspection involving License 50-27794-01, no violations were identified and no response to this part of the inspection is required.

Based on the results of this inspection involving devices possessed under the general license in 10 CFR 31.5, the NRC has determined that one Severity Level IV violation of NRC requirements occurred. This violation was evaluated in accordance with the NRC Enforcement Policy and involved the failure to assure that the removal of the generally licensed devices from installation were performed by a person holding a specific license. The current Enforcement Policy is included on the NRC's website at www.nrc.gov; select **What We Do, Enforcement**, then **Enforcement Policy**. The violation is being cited in the enclosed Notice of Violation (Notice)(Enclosure 1), because it was identified by the NRC instead of being self-identified by the licensee.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. For your consideration and convenience, an excerpt from NRC Information Notice 96-28, "SUGGESTED GUIDANCE RELATING TO DEVELOPMENT AND IMPLEMENTATION OF CORRECTIVE ACTION," is enclosed. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

Usibelli Coal Mine, Inc.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

If you have any questions concerning this inspection or the enclosed Notice, please contact Mr. Richard Leonardi at (817) 860-8187 or the undersigned at (817) 860-8287.

Sincerely,

/RA/

Mark Shaffer, Chief
Nuclear Materials Inspection Branch

Docket No.: 030-36755
License No.: 50-27794-01

Enclosures:

- (1) Notice of Violation
- (2) NRC Information Notice 96-28

cc w/Enclosure:
Alaska Radiation Control Program Director

bcc w/enclosure (via e-mail distrib):
LDWert
MRShaffer
RALeonardi
KEGardin
NMIB
RIV Materials Docket File (5th Floor)

UNSI Review Completed: RAL

ADAMS: X Yes No Initials: RAL

X Publicly Available Non-Publicly Available Sensitive X Non-Sensitive

DOCUMENT NAME: s:\dnms\!nmib\!leonardi\63675501.wpd

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RIV:DNMS:NMIB	C:NMIB
RALeonardi	MRShaffer
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ENCLOSURE

NOTICE OF VIOLATION

Usibelli Coal Mine, Inc.
Healy, Alaska

Docket No. 150-00050
License No.: General

During an NRC inspection conducted on February 15, 2006, under the general license in 10 CFR 31.5, one violation of NRC requirements was identified. In accordance with the Enforcement Policy, the violation is listed below:

10 CFR 31.5(c)(3) requires, in part, that any person who acquires, receives, possesses, uses or transfers byproduct material in a device pursuant to 10 CFR 31.5(a) shall assure that installation, servicing, and removal from installation involving the radioactive material its shielding or containment, are performed: (1) in accordance with the instructions provided in the device manufacturer's operation manuals; or (2) by a person holding a specific license pursuant to 10 CFR Parts 30 and 32 or from an Agreement State to perform these activities.

The device manufacturer's operation manuals for the four devices (two Kay-Ray/Sensall and two Berthold Technologies USA) possessed under a general license pursuant to 10 CFR 31.5(a) states, in part, that all device installation, dismantling, relocation, repair and testing involving the radioactive material, its shielding and containment shall be performed by persons specifically licensed by the NRC or an Agreement State.

Contrary to the above, the licensee failed to assure that removal of the four devices from installation was performed in accordance with the instructions provided by the manufacturer's operation manuals, or by a person holding a specific license pursuant to 10 CFR Parts 30 and 32, or from an Agreement State to perform these activities. Specifically, in calendar year 2005, the licensee dismantled and relocated the four devices (two Kay-Ray/Sensall and two Berthold Technologies USA) containing approximately 130 millicuries of cesium-137 and 300 millicuries of americium-241 from the licensee's coal processing facility to a designated storage area. The licensee was not specifically licensed by the NRC or an Agreement State to perform this activity.

This is a Severity Level IV violation (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, the Usibelli Coal Mine, Inc., is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region IV, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified,

suspended, or revoked, or why such other action as may be proper, should not be taken. Where good cause is shown, consideration will be given to extending the response time.

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.

Because your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>, to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated this 7th day of April 2006