

CBRLicenseRenPEm Resource

From: CrowButte-LicenseRenewal Resource
Sent: Friday, February 27, 2009 12:45 PM
To: CBRLicenseRenPEm Resource
Subject: NRC Information Notice on Unauthorized Ownership Transfers
Attachments: Unauthorized Ownership Transfer.pdf

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Subject: NRC Information Notice on Unauthorized Ownership Transfers
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From: CrowButte-LicenseRenewal Resource

Created By: CrowButte-LicenseRenewal.Resource@nrc.gov

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"CBRLicenseRenPEm Resource" <CBRLicenseRenPEm.Resource@nrc.gov>
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MESSAGE	3	2/27/2009 12:45:14 PM
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Return Notification: No
Reply Requested: No
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UNITED STATES
 NUCLEAR REGULATORY COMMISSION
 OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
 WASHINGTON, D.C. 20555

December 7, 1994

NRC INFORMATION NOTICE 89-25, REV. 1: UNAUTHORIZED TRANSFER OF OWNERSHIP
 OR CONTROL OF LICENSED ACTIVITIES

Addressees

All fuel cycle and material licensees.

Purpose

NRC is issuing this revised information notice to clarify previous guidance concerning the information to be submitted to NRC, prior to a change of ownership or control. The notice also incorporates recent information from NRC's Office of the General Counsel (OGC) concerning the transferee's liability for open inspection issues and potential enforcement actions from past violations; and responsibility for decontamination activities and decommissioning of the site. It is expected that recipients will review this notice, distribute it to responsible staff, and consider actions as appropriate, to ensure compliance with NRC requirements concerning the transfer of control of licensed activities. However, suggestions contained in this notice are not new NRC requirements; therefore, no written response is required.

Background

This information notice was originally issued to inform licensees of their responsibility to provide timely notification to NRC before the planned transfer of ownership or control of licensed activities and obtain prior written consent to such action from NRC, as specified in Title 10 of the Code of Federal Regulations, 10 CFR 30.34(b), 40.46, and 70.36. Specific guidance was also provided outlining the information to be submitted by licensees concerning changes of ownership or control resulting from mergers, buy-outs, or majority stock transfers.

Discussion

Section 30.34(b) states: "No license issued or granted pursuant to the regulations in this part, Parts 31 through 36, and 39, nor any right under a license shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of

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control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the

provisions of the Act and shall give its consent in writing." Similar regulations are contained in 10 CFR 40.46 and 70.36. Thus, the regulations are very clear that control of licenses cannot be transferred without prior written permission from the Commission.

Although it is not NRC's intent to interfere with the business decisions of licensees, it is necessary for licensees to provide timely notification to NRC whenever such decisions could involve changes in the corporate structure responsible for management oversight, control, or radiological safety of licensed materials. Full information on changes of ownership or control of licensed activities should be submitted to the appropriate NRC regional or Headquarters office, 90 days prior to the proposed action. The purpose of such notification is to allow NRC to assure that: (1) radioactive materials are possessed, used, owned, or controlled only by persons who have valid NRC licenses; (2) materials are properly handled and secured; (3) persons using such materials are capable, competent, and committed to implement appropriate radiological controls; (4) licensees provide adequate financial assurance for compliance with NRC requirements; and (5) public health and safety are not compromised by the use of such materials. Although the burden of notification is on the existing licensee, it may still be necessary for the transferee to provide supporting information or to independently coordinate the change in ownership or control with the appropriate NRC office.

NRC licensees planning to transfer ownership, to change the corporate status, or to change control of licensed activities are required to provide sufficient prior notice and full information about the change to NRC, and to obtain written consent from the Commission before the transfer. Failure to comply with this requirement may adversely affect the public health and safety and interfere with NRC's ability to inspect licensed activities. Cases where change of ownership or control has occurred without prior written consent from NRC will be treated as noncompliance with the provisions of 10 CFR 30.34 (or the similar provisions of 10 CFR 40.46, and 70.36), and will be referred to the inspection staff and/or Office of Investigations, as appropriate. The failure to receive required NRC approval prior to a change in ownership or control of licensed activities is considered to be a Severity Level III violation and may warrant escalated enforcement action, to include civil penalties and orders, .

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if indicated by the circumstances, against one or both of the parties involved. Willful failure to obtain prior NRC approval of the transfer may result in referrals to the Department of Justice for consideration of criminal prosecution.

Licensees should note that a license cannot be sold or transferred by itself to a transferee. In situations where a licensed company is purchased in its entirety, and the transferor will not continue in business as a separate entity, the purchase can be approved if the license is amended to reflect any name changes, compliance with financial assurance requirements, personnel changes, or any other change that would normally require an amendment. If there are no changes, an amendment may not be necessary and the transferee and transferor will be notified by letter that NRC has no objection to the sale, based on written statements from the transferee/transferor confirming that no changes in the licensed operation will occur as a result of the sale.

In cases where a licensed operation is purchased from a transferor, who continues in business as a separate entity (without the license), the transferee must submit an application for an amendment to the license to reflect the change in identity of the licensee, compliance with financial assurance requirements, and any other pertinent changes in the operation. The transferee can use the transferor's docketed documents as a basis for preparing the license amendment application. Usually a new license will not be issued. However, the transferee can always apply for a new license by providing a complete application. If a new license is issued, the transferor must request termination of its license as a separate action.

In order to maintain their availability, records important to the safe and effective decommissioning of the facility and all records concerning public dose and waste disposal need to be transferred to the new licensee or to NRC in cases of terminations. Therefore, no transfers or changes of ownership or license terminations will be authorized until all information or records concerning decommissioning of the facility, radiation doses to the public and waste disposal, such as releases to sewers, incineration, radioactive spills,

and on-site burials, have been transferred to the new licensee, if licensed activities will continue at the same location, or to NRC for license terminations.

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Attachment 1 outlines the information needed by the NRC to approve changes of ownership or control. This information notice requires no specific action nor written response. If you have any questions about the information in this notice, please contact the technical contact listed below or the appropriate regional office.

/s/'d by CJPaperiello

Carl J. Paperiello, Director
Division of Industrial and
Medical Nuclear Safety
Office of Nuclear Material Safety
and Safeguards

Technical contact: Susan L. Greene, NMSS
(301) 415-7843

Attachments:

- 1. Information Needed for Change of Ownership

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INFORMATION NEEDED FOR CHANGE OF OWNERSHIP APPLICATION

The applicant should provide the following information concerning changes of ownership or control by the applicant (transferor and/or transferee, as appropriate):

1. The new name of the licensed organization. If there is no change, the licensee should so state.
2. The new licensee contact and telephone number(s) to facilitate communications.
3. Any changes in personnel having control over licensed activities (e.g., officers of a corporation) and any changes in personnel named in the license such as radiation safety officer, authorized users, or any other persons identified in previous license applications as responsible for radiation safety or use of licensed material. The licensee should include information concerning the qualifications, training, and responsibilities of new individuals.
4. An indication of whether the transferor will remain in non-licensed business without the license.
5. A complete, clear description of the transaction, including any transfer of stocks or assets, mergers, etc., so that legal counsel is able, when necessary, to differentiate between name changes and changes of ownership.
6. A complete description of any planned changes in organization, location, facility, equipment, or procedures (i.e., changes in operating or emergency procedures).
7. A detailed description of any changes in the use, possession, location or storage of the licensed materials.
8. Any changes in organization, location, facilities, equipment, procedures, or personnel that would require a license amendment even without the change of ownership.

9. An indication of whether all surveillance items and records (e.g., calibrations, leak tests, surveys, inventories, and accountability requirements) will be current at the time of transfer. A description of the status of all surveillance requirements and records should also be provided.

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10. Confirmation that all records concerning the safe and effective decommissioning of the facility, pursuant to 10 CFR 30.35(g), 40.36(f), 70.25(g), and 72.30(d); public dose; and waste disposal by release to sewers, incineration, radioactive material spills, and on-site burials, have been transferred to the new licensee, if licensed activities will continue at the same location, or to the NRC for license terminations.
11. A description of the status of the facility. Specifically, the presence or absence of contamination should be documented. If contamination is present, will decontamination occur before transfer? If not, does the successor company agree to assume full liability for the decontamination of the facility or site?
12. A description of any decontamination plans, including financial assurance arrangements of the transferee, as specified in 10 CFR 30.35, 40.36, and 70.25. This should include information about how the transferee and transferor propose to divide the transferor's assets, and responsibility for any cleanup needed at the time of transfer.
13. Confirmation that the transferee agrees to abide by all commitments and representations previously made to NRC by the transferor. These include, but are not limited to: maintaining decommissioning records required by 10 CFR 30.35(g); implementing decontamination activities and decommissioning of the site; and completing corrective actions for open inspection items and enforcement actions.

With regard to contamination of facilities and equipment, the transferee should confirm, in writing, that it accepts full liability for the site, and should provide evidence of adequate resources to fund decommissioning; or the transferor should provide a commitment to decontaminate the facility before change of control or ownership.

With regard to open inspection items, etc., the transferee should confirm, in writing, that it accepts full responsibility for open inspection items and/or any resulting enforcement actions; or the transferee proposes alternative measures for meeting the requirements; or the transferor provides a commitment to close out all such actions with NRC before license transfer.

14. Documentation that the transferor and transferee agree to the change in ownership or control of the licensed material and activity, and the conditions of transfer; and the transferee is made aware of all open inspection items and its responsibility for possible resulting enforcement actions.

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15. A commitment by the transferee to abide by all constraints, conditions, requirements, representations, and commitments identified in the existing license. If not, the transferee must provide a description of its program, to ensure compliance with the license and regulations.



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UNITED STATES
 NUCLEAR REGULATORY COMMISSION
 OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
 WASHINGTON, D.C. 20555

March 7, 1989

Information Notice No. 89-25: UNAUTHORIZED TRANSFER OF OWNERSHIP OR
 CONTROL OF LICENSED ACTIVITIES

Addressees:

All U.S. Nuclear Regulatory Commission (NRC) source, byproduct, and special nuclear material licensees.

Purpose:

This notice is to inform licensees of their responsibility to provide timely notification to NRC before the planned transfer of ownership or control of licensed activities, and to obtain prior written consent to such action from NRC, as specified in 10 CFR Sections 30.34(b), 40.46, and 70.36. In addition, this notice provides guidance on the type of information that should be submitted to NRC, before a change of ownership or control. It is expected that recipients will: review this notice for applicability to their licensed activities; distribute it to responsible licensee management and corporate staff, radiation protection staff, and authorized users, as appropriate; and maintain procedures to preclude problems from occurring as the result of the transfer of control of licensed activities. However, suggestions contained in this notice do not constitute any new NRC requirements, and no written response is required.

Discussion:

Sections 81 and 184 of the Atomic Energy Act of 1954, as amended, require that a license be possessed to conduct licensed activities, and 10 CFR Section 30.34(b) states that no NRC license nor any right under a license shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and shall give its consent in writing. Similar wording is found in Sections 40.46 and 70.36 of the regulations for source and special nuclear material.

Recently, NRC has noticed an increasing trend to transfer ownership of businesses that control the use of licensed materials. Such changes in ownership are usually the results of mergers, buy-outs, or majority stock transfers. These actions appear to be occurring at a greater frequency because of the present economic environment. Although it is not the intent

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of NRC to interfere with the business decisions of licensees, it is necessary

for licensees to provide timely notification to NRC whenever such decisions could involve changes in the corporate structure responsible for management oversight, control, or radiological safety of licensed materials. The purpose of such notification is to allow NRC to assure that: radioactive materials are possessed, used, owned, or controlled only by persons who have valid NRC licenses; materials are properly handled and secured; persons using such materials are capable, competent, and committed to implement appropriate radiological controls; and public health and safety are not compromised by the use of such materials.

In 1988, NRC identified several instances of businesses authorized to possess and use licensed materials that were transferred to other owners, with a consequent change in control, without any notification to the NRC. In such cases, NRC has usually become aware of the change either when conducting a routine inspection or when notified by the new controlling organization (transferee).

Transfer of company ownership often results in the assumption of licensed activities by a corporation not authorized to use or possess licensed materials, and whose competence and ability to establish, implement, and maintain radiological controls have not been previously evaluated by NRC. In such cases, NRC usually determines that the transferee violated NRC requirements on use and possession of radioactive materials (because of its unauthorized use and possession), and that the predecessor entity (transferor) failed to inform NRC of the planned transfer of ownership.

In specific cases, licensees have failed to inform NRC of changes in ownership and changes in locations of licensed material from those specified on the transferor's licenses. In one particular case, failure to notify NRC of a change in ownership may have contributed to the inadvertent loss of two nuclear weighing scales, containing several hundred millicuries of cesium-137. This type of situation could result in the exposure or contamination of individuals or the environment.

NRC licensees planning to transfer ownership, a change in corporate status, or control of licensed activities are required by 10 CFR to provide sufficient prior notice and full information about the change to NRC, in order to obtain written consent from the Commission before the transfer. Although the burden of adhering to this requirement is on the existing licensee, it will be necessary for the transferee to provide supporting information or to independently coordinate the change in ownership or control with the appropriate NRC Regional Office. Failure to comply with this requirement may adversely affect the public health and safety and interfere with NRC's ability to inspect activities. Therefore, NRC may consider that a violation of this requirement warrants escalated enforcement action, including civil penalties and orders, if indicated by the circumstances against one or both of the parties involved. Willful failure to obtain prior NRC approval of the transfer may result in referrals to the Department of Justice for consideration of criminal prosecution.

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The following guidance is provided concerning notification of NRC of ownership or control changes:

1. Full information on change in ownership or control of licensed activities should be submitted to the appropriate NRC Regional Office as early as possible, preferably at least 90 days before the proposed action.
2. NRC approvals for change in ownership or control may be delayed or denied if the following information, where relevant, is not included in the submittal:
 - a. The name of the organization, if changed. Provide the new name of the licensed organization and if there is no change, so state.
 - b. Identification of any changes in personnel named in the license, including any required information on personnel qualifications.
 - c. An indication of whether the seller will remain in business without the license.

- d. A complete, clear description of the transaction. The description should include any transfer of stocks or assets.
- e. An indication of any planned changes in organization, location, facilities, equipment, procedures, or personnel. If such changes are to be made, they should be fully described.
- f. An indication of any changes in the use, possession, or storage of the licensed materials. If such changes are to be made, they should be described.
- g. An indication of whether all surveillance items and records, including radioactive material inventory and accountability requirements, will be current at the time of transfer. A description of the status of all surveillance requirements and records, e.g., calibrations, leak tests, surveys, etc. should be provided.
- h. A description of the status of the facility. Specifically, the presence or absence of contamination should be documented. If contamination is present, will decontamination occur before transfer? If not, does the successor company agree to assume full liability for the decontamination of the facility or site?
- i. A description of any decontamination plans, including financial assurance arrangements of the transferee, should be provided,

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as specified in 10 CFR Sections 30.35, 40.36, and 70.25. This should include information about how the transferee and transferor propose to divide the transferor's assets, and responsibility for any cleanup needed at the time of transfer.

- j. An indication of whether the transferor and transferee agree to the change in ownership or control of the licensed material and activity. If so, documentation stating this should be provided.
- k. A commitment by the transferee to abide by all constraints, conditions, requirements, representations, and commitments identified in the existing license. If not, the transferee must provide a description of its program to assure compliance with the license and regulations.

No specific action or written response is required by this information notice. Questions on this matter should be directed to the appropriate NRC Regional Office or to this office.

Richard E. Cunningham, Director
Division of Industrial and
Medical Nuclear Safety
Office of Nuclear Material
Safety and Safeguards

Technical Contact: Scott Moore, NMSS
(301) 492-0514

Attachments: 1. List of Recently Issued NMSS Information Notices
2. List of Recently Issued NRC Information Notices

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LIST OF RECENTLY ISSUED

NRC INFORMATION NOTICES

Information Notice No.	Subject	Date of Issuance	Issued to
89-24	Nuclear Criticality Safety	3/6/89	All fuel cycle licensees and other licensees possessing more than critical mass quantities of special nuclear material.
89-23	Environmental Qualification of Litton-Veam CIR Series Electrical Connectors	3/3/89	All holders of OLs or CPs for nuclear power reactors.
89-22	Questionable Certification of Fasteners	3/3/89	All holders of OLs or CPs for nuclear power reactors.
89-21	Changes in Performance Characteristics of Molded-Case Circuit Breakers	2/27/89	All holders of OLs or CPs for nuclear power reactors.
88-73, Supplement 1	Direction-Dependent Leak Characteristics of Containment Purge Valves	2/27/89	All holders of OLs or CPs for nuclear power reactors.
89-20	Weld Failures in a Pump of Byron-Jackson Design	2/24/89	All holders of OLs or CPs for nuclear power reactors.
89-19	Health Physics Network	2/23/89	All holders of OLs or CPs for nuclear power reactors, and the following fuel facilities: Nuclear Fuel Services of Erwin, General Atomic, UNC Montville, B&W LRC Lynchburg, and B&W Lynchburg.
89-18	Criminal Prosecution of Wrongdoing Committed by Suppliers of Nuclear Products or Services	2/22/89	All holders of OLs or CPs for nuclear power reactors.

OL = Operating License
CP = Construction Permit