



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
2443 Warrenville Road, Suite 210
Lisle, Illinois 60532-4352

TELEFAX TRANSMITTAL

DATE: 1/21/2010 NUMBER OF PAGES: 4
(including this page)

SEND TO: BOB DYER

LOCATION: "BLACK BEAUTY COAL CO." (BEAR RUN COAL CO.)

FAX NUMBER: 812 - 484² - 6551 **VERIFY BY CALLING SENDER**

FROM: MIKE HERR, CHP.
(SENDER)

TELEPHONE NUMBER: 630 - 829 - 9752 FAX NUMBER: 630 - 515 - 1078

If you do not receive the complete fax transmittal, please contact the sender as soon as possible at the telephone number provided above.

MESSAGE Please call if you have questions.

NOTICE

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by telephone and return the original to the above address, by U.S. Mail. Thank you.

**Michael G. Herr, CHP
LICENSING REVIEWER
MATERIALS LICENSING BRANCH
UNITED STATES NUCLEAR REGULATORY COMMISSION
REGION III
2443 WARRENVILLE ROAD SUITE 210
LISLE, ILLINOIS 60532-4352
OFFICE: (630)-829-9752 FAX: (630) 515-1078**

CONVERSATION RECORD	TIME	DATE
ACTUALLY FAXED? YES.	2:04pm- 2:40 pm on 1/19/2010	January 21, 2010

NAME OF PERSON(S) CONTACTED	ORGANIZATION	TELEPHONE NO.
Robert L. Dyer RSO	Black Beauty Coal Company	O: 812-434-8537 F: 812-464-6551

SUBJECT
License No.: 13-315133-05 Control No.: **318625**

SUMMARY

We have reviewed your letter dated October 27, 2009, requesting an amendment to your byproduct materials license along with your submitted NRC Form 313 (dated October 26, 2009) with its Attachment A. As per the telephone discussion on January 19, 2010, between Colleen Carol Casey and you and me, please submit additional information as follows:

Please resubmit your application for an amendment in its entirety, focusing on the responses and commitments in Appendix B in NUREG-1556, Vol. 4, dated October 1998.

1. In Item 2, "Name and Mailing Address of Applicant." You listed the name of the corporation to be "Bear Run Coal Company" on the NRC Form 313 dated 10/26/09 and listed the name of "Bear Run Coal Company, LLC" on the letter dated 10/27/09. **Please confirm that "Bear Run Coal Company, LLC" is the correct legal corporation name and document on NRC Form 313. Please also confirm that no change of ownership or control has taken place which resulted in the name change you are currently requesting.**

2. In Item 7, "Individuals Responsible for Radiation Safety Program and Their Training Experience" of Attachment A you have requested that Randy Bowman be an additional RSO. A licensee cannot have two RSOs. **Please list Randy Bowman as an "alternate RSO;" confirm that he will act as RSO ONLY in the physical absence of the RSO; include a statement dated and signed by Mr. Bowman that stipulates his acceptance of the position as Alternate RSO and that he understands the duties and responsibilities as Alternate RSO; and submit evidence of Mr. Bowman's training and experience sufficient to demonstrate equivalence to the RSO's training and experience, in accordance with NUREG 1556, Vol. 4 Section 8.7, Item 7: "Individual(s) Responsible for Radiation Safety Program and Their Training and Experience." Please also provide a completed, signed and dated "Delegation of Authority" form.**

3. Item 10, "Radiation Safety Program – Operating & Emergency Procedures" of Attachment A, you referenced the wrong revision of NUREG -1556 Vol. 4. **Please respond by referencing NUREG-1556, Vol. 4, dated October 1998.**
4. Item 10, "Occupational Dosimetry" of Attachment A, you state that "the manufacturer, distributor, or any other person authorized by an Agreement State will perform a prospective dose evaluation."

Please note that this dose evaluation must be conducted by you, the licensee. Please respond by confirming that you will perform the dose evaluation called for in evaluating "Occupational Dosimetry."

Please note that certain sections of NUREG-1556, Vol. 4, dated October 1998, have been modified since its original publication, as noted below:

5. **We now require a total possession limit for each radionuclide requested, as well as providing the "per source" activity you need, which should match the Sealed Source and Device Registry certificate procured by the vendor. Please provide this information and it is acceptable to request more sealed sources than you may actually need immediately, to allow for some growth, so long as the request is reasonable and realistic.**
 6. **You will not be able to change and name your RSO internally, as Condition No. 12.B. currently allows; NRC must do that for you via the amendment process. When we complete this amendment we will be deleting Condition No. 12.B.**
 7. **For future reference only, please include the name and qualifications of your proposed RSO and a written, signed and dated statement that stipulates your proposed RSO accepts the RSO position and understands the duties and responsibilities associated with the position. Each proposed RSO must be qualified in accordance with the guidance in NUREG 1556, Vol. 4, Section 8.7, Item 7: "Individual(s) Responsible for Radiation Safety Program and Their Training and Experience."**
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8. **Please confirm that you have not been in possession of any licensed material under this license since the license was authorized for "possession and storage in standby" since late 2005. We discussed this on January 19, 2010.**
 9. **In addition, during the telephone call on January 19, 2010, we confirmed with you that the regulatory requirements in 10 CFR 30.36 (d)(3) were not met, in that "No principal activities under the license have been conducted for a period of 24 months." And yet, this license was not then terminated, approximately two years ago. Since you are re-activating the license at this time, we are moving forward with said re-activation in lieu of termination and issuance of a new license. However, please be aware of the requirements in 10 CFR 30.36 in the future.**

We will be unable to continue processing your request until we receive this information.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter will be available electronically in the NRC Public Document Room or from the Publicly Available Record

(PARS) component of NRC's document system (ADAMS) accessible from the NRC Website at <http://www.nrc.gov/reading-rem/adams.html>.

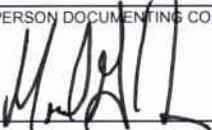
ACTION REQUIRED

As we cannot issue an amendment at this time we are voiding this request in order to enable you to prepare a quality application without time constraints. This is done without prejudice to the resubmission of your request at a later date. Upon receipt of your response we will resume our review. Address your written response to my attention at the above address using the control number 318625 to facilitate proper handling.

PLEASE NOTE THAT A "VOID" IS AN ADMINISTRATIVE PROCEDURE THAT PUTS YOUR AMENDMENT REQUEST "ON HOLD" (TAKES IT OUT OF OUR ACTIVE CASEWORK DATABASE) UNTIL YOU REACTIVATE IT VIA SUBMISSION OF A WRITTEN RESPONSE. IT "BUYS" YOU TIME TO PREPARE A QUALITY RESPONSE AND IS GENERALLY REGARDED AS A "GOOD THING."

PLEASE DIRECT ANY QUESTIONS YOU MAY HAVE TO ME AT 630-829-9752 or (800) 522-3025, EXT. 9752.

In the alternative, if you cannot reach me, you may contact Colleen Carol Casey at 630-829-9841 or (800) 522-3025, EXT. 9841.

NAME OF PERSON DOCUMENTING CONVERSATION	SIGNATURE	DATE
Michael G. Herr, CHP		January 21, 2010
		1/21/2010

TRANSMISSION VERIFICATION REPORT

TIME : 01/21/2010 17:38
NAME : USNRC RIII
FAX : 6308299782
TEL :
SER.# : 000A7J925774

DATE, TIME : 01/21 17:37
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NRC FORM 386 (RIII)
(4-2004)



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