



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

April 8, 2010

Docket No. 03028938

License No. 47-24809-01

Joseph Wills
Operations Manager
Eastern Associated Coal, LLC
Wells Preparation Plant
P.O. Box 29
Wharton, WV 25208

SUBJECT: NRC INSPECTION REPORT NO. 03028938/2010001, EASTERN ASSOCIATED COAL, LLC, WELLS PREPARATION PLANT, WHARTON, WEST VIRGINIA SITE AND NOTICE OF VIOLATION

Dear Mr. Wills:

On March 17, 2010, Scott Wilson of this office conducted a safety inspection at the above address of activities authorized by the above listed NRC license. The inspection was an examination of your licensed activities as they relate to radiation safety and to compliance with the Commission's regulations and the license conditions. The inspection consisted of observations by the inspector, interviews with personnel, and an examination of representative records. Additional information provided by Mr. Benedict, your Radiation Safety Officer, via electronic mail dated March 24, 2010, and your letter dated March 25, 2010, which described your corrective actions, was also examined as part of the inspection. The findings of the inspection were discussed with you, Mr. Moore, and Mr. Benedict by telephone on April 7, 2010.

Based on the results of this inspection and in accordance with the NRC Enforcement Policy, the NRC has determined that one Severity Level IV violation of NRC requirements occurred. The violation involved the failure to test the Coalscan Model 3500 gauging devices' on-off mechanism (shutter) and indicator for proper operation at intervals required by your license. The violation is cited in the enclosed Notice of Violation (Notice), because the violation was identified by the NRC.

During the inspection exit meeting on April 7, 2010, you indicated that you are in agreement with the findings of this inspection. You stated that you have taken corrective and preventative actions to address the violation. Further, you documented in your March 25, 2010, correspondence, that you have taken the following corrective and preventative actions:

- 1) Tested the on-off mechanism (shutter) and indicator for proper operation on March 24, 2010;
- 2) Eastern Associated Coal, LLC, will ensure that all required tests are performed in accordance with License Condition No. 17; and,
- 3) Eastern Associated Coal, LLC, has entered into an agreement with Kanawha Scales and Systems, a company authorized to work on the gauge, to perform the tests at the required frequency.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence is already adequately addressed in our records and in your correspondence dated March 25, 2010. Therefore, you are not required to respond to this letter unless the description of your corrective actions does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC document system (ADAMS), accessible from the NRC website 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.

Current NRC regulations are included on the NRC's website at www.nrc.gov; select **Nuclear Materials; Medical, Academic, and Industrial Uses of Nuclear Material**; then **Regulations, Guidance, and Communications Page**. The current Enforcement Policy is included on the NRC's website at www.nrc.gov; select **About NRC; How We Regulate; Enforcement**; then **Enforcement Policy**. You may also obtain these documents by contacting the Government Printing Office (GPO) toll-free at 1-866-512-1800. The GPO is open from 7:00 a.m. to 6:30 p.m. EST, Monday through Friday (except Federal holidays).

Please contact Scott Wilson at 610-337-5136, if you have any questions regarding this matter.

Sincerely,

Original signed by Marie Miller

Marie Miller, Chief
Security and Industrial Branch
Division of Nuclear Materials Safety

Enclosure:
Notice of Violation

cc:
Joseph Benedict, Radiation Safety Officer
Erman Moore, Manager of Environmental
State of West Virginia

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence is already adequately addressed in our records and in your correspondence dated March 25, 2010. Therefore, you are not required to respond to this letter unless the description of your corrective actions does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

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Sincerely,

Original signed by Marie Miller

Marie Miller, Chief
 Security and Industrial Branch
 Division of Nuclear Materials Safety

Enclosure:
 Notice of Violation

cc:
 Joseph Benedict, Radiation Safety Officer
 Erman Moore, Manager of Environmental
 State of West Virginia

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OFFICE	DNMS/RI	N	DNMS/RI	N	DNMS/RI			
NAME	SWilson		MMiller					
DATE								

NOTICE OF VIOLATION

Eastern Associated Coal, LLC
Wharton, WV

Docket No. 03028938
License No. 47-24809-01

During an NRC inspection conducted on March 17, 2010, one violation of NRC requirements was identified. The violation was discussed during the telephone exit meeting on April 7, 2010. In accordance with the NRC Enforcement Policy, the violation is listed below:

- License Condition No. 17 states, in part, that each gauge shall be tested for the proper operation of the on-off mechanism (shutter) and indicator, if any, at intervals not to exceed six months or at such longer intervals as specified in the certificate of registration.

Contrary to License Condition No. 17, between the dates of September 25, 2008, and March 17, 2010, the on-off mechanism (shutter) and indicator on the Coalscan Model 3500 gauge was not tested for proper operation at intervals not to exceed six months as specified in the certificate of registration.

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

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence and the date when full compliance was achieved is already adequately addressed on the docket. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

If you contest this enforcement action, you should also provide a copy of your response to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, any response which contests an enforcement action shall be submitted under oath or affirmation.

Your response will be placed in the NRC Public Document Room (PDR) and on the NRC Web site. To the extent possible, it should, therefore, not include any personal privacy, proprietary, or safeguards information so that it can be made publically available without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

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

Dated this 8th day of April 2010