



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION III
2443 WARRENVILLE RD. SUITE 210
LISLE, IL 60532-4352

MAR 14 2014

Peter C. Lenzen
Radiation Safety Officer
Berry Plastics Corporation
4100 Profile Parkway
Bloomington, IN 47404

SUBJECT: REQUEST FOR CONSENT TO DIRECT LICENSE TRANSFER

By letter dated January 22, 2014, Pliant Corporation/Pliant LLC submitted to the U.S. Nuclear Regulatory Commission (NRC) a Request for Consent to direct License Transfer of NRC Materials License No. 13-32090-01.

Based on the information you provided, we understand that, as a result of a previous acquisition in December 2009 of Pliant Corporation/Pliant LLC by Berry Plastics Corporation, control of Pliant Corporation/Pliant LLC has already directly transferred to Berry Plastics Corporation. We further understand that this transfer resulted in a change to the licensed name, but that no changes to licensed materials, persons using the license material, location of use of licensed material, or persons responsible for the licensee's radiation safety program took place.

Based on the above understandings and, as more fully detailed in the enclosed NRC staff's Safety Evaluation Report which documents the NRC staff's review of the request, we have no objection to the transfer.

Please note that, normally, you should have sought NRC's written consent to the change of control prior to its taking place. Then, after obtaining our consent, you would need to notify us promptly, in writing, after the transaction had been finalized and include a signed copy of the agreement confirming completion of the transaction. With this information, we would issue an administrative amendment to your NRC license to reflect the transaction, if necessary.

However, since this transaction took place more than four years ago, and as normal enforcement has already taken place for the violation related to this transaction and failure to obtain NRC's consent prior to its occurrence, the amendment changing the corporate name to this license is enclosed.

Therefore, Amendment No. 04 to your NRC Material License No. 13-32090-01 is enclosed in accordance with your request.

Please review the enclosed document carefully and be sure that you understand all conditions. If there are any errors or questions, please notify the U.S. Nuclear Regulatory Commission, Region III office at (630) 829-9887 so that we can provide appropriate corrections and answers.

Please contact me, Colleen Carol Casey, at 630-829-9841, or by e-mail at colleen.casey@nrc.gov if you have any questions regarding this letter.

Please note that, at this time, we deleted Condition No. 23 and Condition No. 12.B. from your license, as they appeared on Amendment No. 03. Condition No. 23 was no longer necessary for your licensed program.

Condition No. 12.B. was deleted from your license because NUREG 1556, Vol. 4, "Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Fixed Gauge Licenses," October 1998, contains an item that has changed since its publication but it has not been fully revised yet to reflect these changes. Item 7.1 currently gives you the option of "self-appointing" your Radiation Safety Officer (RSO) internally. Condition No. 12.B. reflected this authorization.

We can no longer permit you to do this. NRC must amend your license before you change RSOs in the future. To change RSOs you should name the proposed RSO, provide evidence of adequate and appropriate training and experience with the fixed gauges and submit a signed and dated statement that the proposed RSO accepts the position and understands the duties and responsibilities associated with it. Your senior management representative must also sign this statement and delegate authority to the proposed RSO to operate your Radiation Safety Program.

A sample "Delegation of Authority" can be found in another NUREG 1556 document, specifically Volume 9, Revision 2, Appendix I, the last section of this appendix. Both documents are available on our website at:

<http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1556/v4/>

<http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1556/v9/r2/>

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," a copy of this letter and its enclosures will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html>.

You will be periodically inspected by NRC. Failure to conduct your program in accordance with NRC regulations, license conditions, and representations made in your license application and supplemental correspondence with NRC will result in enforcement action against you.

This could include issuance of a notice of violation, or imposition of a civil penalty, or an order suspending, modifying or revoking your license as specified in the General Statement of Policy and Procedure for NRC Enforcement Actions.

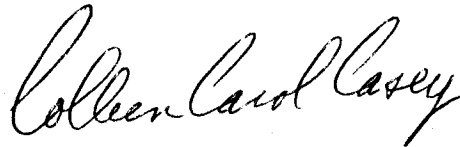
Since serious consequences to employees and the public can result from failure to comply with NRC requirements, prompt and vigorous enforcement action will be taken when dealing with licensees who do not achieve the necessary meticulous attention to detail and the high standard of compliance which NRC expects of its licensees.

The NRC's Safety Culture Policy Statement became effective in June 2011. While a policy statement and not a regulation, it sets forth the agency's *expectations* for individuals and organizations to establish and maintain a positive safety culture.

You can access the policy statement and supporting material that may benefit your organization on NRC's safety culture Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/safety-culture.html>.

We strongly encourage you to review this material and adapt it to your particular needs in order to develop and maintain a positive safety culture as you engage in NRC-regulated activities.

Sincerely,

A handwritten signature in cursive script that reads "Colleen Carol Casey".

Colleen Carol Casey
Materials Licensing Branch
Region III

Docket No. : 030-34732
License No.: 13-32090-01
Control No.: 582917

Enclosures: As stated

**SAFETY EVALUATION REPORT
CHANGE OF CONTROL FOR BYPRODUCT MATERIALS
LICENSE NUMBER 13-32090-01, PLIANT CORPORATION**

DATE: March 13, 2014

DOCKET NO.: 030-34732

LICENSE NO.: 13-32090-01

LICENSEE: Pliant Corporation
4100 Profile Parkway
Bloomington, Indiana

TECHNICAL REVIEWER: Colleen Carol Casey

SUMMARY AND CONCLUSIONS

Pliant Corporation is authorized by NRC License 13-32090-01 for the possession and use of byproduct material for purposes of making thickness measurements with fixed gauges in the plastics manufacturing industry. The U.S. Nuclear Regulatory Commission (NRC) staff reviewed a request for consent to a direct license transfer submitted by Berry Plastics Corporation that resulted from a transaction between Pliant Corporation and Berry Plastics Corporation. In December 2009, Berry Plastics Corporation purchased Pliant Corporation out of bankruptcy. Pliant Corporation was then changed to an "LLC" in August 2010. Pliant, LLC remains in existence as a wholly owned subsidiary of Berry Plastics Corporation, with Berry maintaining the NRC license. The direct transfer of control is described in Agency Documents Access and Management System (ADAMS) accession number ML14024A663.

The request for consent was reviewed by NRC staff for direct change in control of a 10 CFR Part 30 license using the guidance in NUREG 1556, Volume 15, "Consolidated Guidance About Materials Licenses - Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses," dated November 2000. The NRC staff finds that the information submitted by Berry Plastics Corporation sufficiently describes and documents the transaction and commitments made by Pliant Corporation/Pliant LLC and Berry Plastics Corporation.

As required by 10 CFR 30.34 and section 184 of the Atomic Energy Act of 1954, as amended (the Act), NRC staff has reviewed the application and finds that the change in control is in accordance with the Act. The staff finds that, after the change of control, Berry Plastics Corporation remains qualified to use byproduct material for the purpose requested, and continues to have the equipment, facilities, and procedures needed to protect public health and safety, and promotes the security of licensed material.

SAFETY AND SECURITY REVIEW

According to data obtained from the NRC's Licensing Tracking System (LTS), Pliant Corporation has been an NRC licensee since May 27, 1998. The NRC conducted a main office inspection of Pliant Corporation on August 28, 2013, with continued in-office review through September 17, 2013, and one violation was identified during this inspection, pertaining the change of control without NRC's prior written consent.

The commitments made by Berry Plastics Corporation state that it (License No.13-32090-01):

- A. will not change the radiation safety officer listed in the NRC license;
- B. will not change the personnel involved in licensed activities, except as noted in the letter dated January 22, 2014, for corporate management;
- C. will not change the locations, facilities, and equipment authorized in the NRC license;
- D. will not change the radiation safety program authorized in the NRC license;
- E. has changed the organization's name listed in the NRC license; and,
- F. will keep regulatory required surveillance records and decommissioning records.

Therefore, for security purposes, Berry Plastics Corporation is considered a known entity following the guidance provided by the NRC's Office of Federal and State Materials and Environmental Management Programs (FSME) 'Checklist to provide a basis for confidence that radioactive materials will be used as specified on the license,' September 3, 2008 revision. The purpose of this checklist is for the NRC to obtain reasonable assurance from new license applicants or NRC licensees transferring control of licensed activities that the licensed material will be used for its intended purpose and not for malevolent use.

Berry Plastics Corporation is not required to have decommissioning financial assurance based on the types and amount of material authorized in License No. 13-32090-01.

REGULATORY FRAMEWORK

Pliant Corporation's License No. 13-32090-01 was issued under 10 CFR Part 30, Rules of General Applicability to Domestic Licensing of Byproduct Material. The Commission is required by 10 CFR 30.34 to determine if the change of control is in accordance with the provisions of the Act and give its consent in writing.

10 CFR 30.34(b) states: "No license issued or granted pursuant to the regulations in this part and 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 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."

As previously indicated, the staff evaluation is based on guidance in NUREG-1556, Volume 15. As discussed in NUREG-1556, Volume 15, NRC is generally using the term "change of control" rather than the statutory term "transfer" to describe the variety of events that could require prior notification and written consent of the NRC. The central issue is whether the authority over the license has changed. Pliant Corporation's request for consent describes a direct change of control resulting from a planned acquisition between Pliant Corporation and Berry Plastics Corporation. Berry Plastics Corporation purchased Pliant Corporation out of bankruptcy. Following the completion of the purchase, the Licensee Name changed directly to Berry Plastics Corporation and Pliant LLC became a wholly-owned subsidiary of Berry Plastics Corporation and, as such, the transfer requires NRC consent.

DESCRIPTION OF TRANSACTION

The transaction is described in ADAMS accession number ML14024A663. Berry Plastics Corporation continues as the licensee and remains in control of all licensed activities under Materials License No. 13-32090-01. The NRC staff finds that the request for consent adequately provides a complete and clear description of the transaction, and is consistent with the guidance provided in Appendix F of NUREG-1556, Volume 15.

TRANSFEREE'S COMMITMENT TO ABIDE BY THE TRANSFEROR'S COMMITMENTS

The NRC staff finds that the information submitted by Pliant Corporation sufficiently describes and documents the commitments made by Berry Plastics Corporation and is consistent with the guidance in NUREG-1556, Volume 15.

ENVIRONMENTAL REVIEW

An environmental assessment for this action is not required since this action is categorically excluded under 10 CFR 51.22(c)(14)(xi).

CONCLUSION

The staff has reviewed the request for consent submitted by Berry Plastics Corporation with regard to a direct change of control of byproduct materials license No. 13-32090-01 and approves the application pursuant to 10 CFR 30.34(b).

The submitted information sufficiently describes the transaction; documents the understanding of the license and commitments; demonstrates that personnel have the experience and training to properly implement and maintain the license and that they will maintain the existing records; and, in the future, will abide by all existing commitments to the license, consistent with the guidance in NUREG-1556, Volume 15.

Therefore, the staff concludes that the change in control does not alter the previous findings, made under 10 CFR Part 30, that licensed operations will not be inimical to the common defense and security, or to the health and safety of the public.