

**SAFETY EVALUATION REPORT**  
**PROPOSED CHANGE OF CONTROL FOR BYPRODUCT NRC MATERIALS LICENSE**  
**NUMBERS 47-24809-01, 47-24917-01, 47-25301-01, and 47-31315-01, PATRIOT COAL**  
**CORPORATION & WHOLLY-OWNED SUBSIDIARIES.**

**DATE:** March 11, 2016

**DOCKET Nos.:** 030-28938  
030-30008  
030-33571  
030-37777

**LICENSE No.:** 47-24809-01  
47-24917-01  
47-25301-01  
47-31315-01

**CONTROL Nos.:** 589834  
589835  
589836  
589839

**LICENSEE:** Patriot Coal Corporation  
63 Corporate Centre Drive  
P.O Box 1001  
Scott Depot, West Virginia 25560

**TECHNICAL REVIEWER:** John Miller, Health Physicist, Region I

**SUMMARY AND CONCLUSIONS**

Patriot Coal Corporation, and its wholly-owned subsidiaries (Eastern Associated Coal, LLC, Apogee Coal Company, LLC, Catenary Coal Company, LLC, and Midland Trail Energy) were authorized by NRC Licenses 47-24809-01, 47-24917-01, 47-25301-01, and 47-31315-01 for the use of byproduct material in fixed gauging devices for density, level, and interface measurements and elemental analysis and in portable gauging devices for measuring physical properties of materials.

In a letter dated May 13, 2015 (ML15162A109), Patriot Coal Corporation notified the NRC, in accordance with 10 CFR 30.34(h)(1), that it had filed for bankruptcy along with several of its wholly-owned subsidiaries, some of whom were also NRC licensees. In response, the NRC sent a letter to Patriot Coal Corporation dated June 25, 2015 (ML15181A068) acknowledging their notification and reminding them of their obligations to comply with NRC requirements, including those relating to safety and security of the radioactive material and the requirement in the Atomic Energy Act of 1954, as amended, and NRC's regulations that they may not transfer control of licensed material without the NRC's prior written approval. In the June 25, 2015, the NRC also informed them that they may not transfer control of their license or licensed material without the NRC's prior written approval. On October 15, 2015, the NRC filed in the Patriot Coal Corporation bankruptcy proceeding a notice of these obligations, "Notice of Prohibition Against Transfer of License or Disposal of Licensed Radioactive Material Without Prior Written Approval of NRC and Notice of Debtors' Obligations as General Licensee of the NRC."

Patriot Coal Corporation notified the NRC in a letter dated November 24, 2015 from Earl Moles, Environmental Manager, Patriot Coal Services, to NRC Region 1 (ML15337A432), that they had completed the Chapter 11 restructuring process and sold most of Patriot's operating assets to Blackhawk Mining, LLC, including the licensed material. Patriot Coal and Blackhawk Mining, LLC did not receive NRC approval prior to the transfer of control. In response, the NRC informed Blackhawk Mining, LLC that they must request approval for license transfers and Blackhawk then requested post-hoc approval of the transfers.

By letter dated December 28, 2015 (ML16013A253)<sup>1</sup>, a request for NRC consent to a indirect transfer of the licenses at a Chapter 11 auction, on October 28, 2015, whereby Patriot Coal Corporation sold the majority of its operating assets to Blackhawk Mining, LLC. Several of Patriot Coal Corporation's subsidiaries with operations in West Virginia are NRC license holders and a complete list of these NRC licenses, including the names of the successor companies, which are wholly-owned subsidiaries of Blackhawk, are listed below.

<b>Previous Company Name</b>	<b>NRC License No.</b>	<b>Successor Company Name</b>
Eastern Associated Coal, LLC	47-24809-01	Rockwell Mining, LLC
Apogee Coal Company, LLC	47-24917-01	Guyandotte Mining, LLC
Catenary Coal Company, LLC	47-25301-01	Panther Creek Mining, LLC
Midland Trail Energy	47-31315-01	Blue Creek Mining, LLC

As a result of the Chapter 11 sale, Blackhawk Mining, LLC, the parent company of Rockwell Mining, LLC, Guyandotte Mining, LLC, Panther Creek Mining, LLC, and Blue Creek Mining, LLC, requested approval for amendments to the current licenses to change the names from the Patriot Coal Corporation subsidiaries to the names of the Blackhawk Mining, LLC subsidiaries as listed in the above table, upon approval of the indirect transfer of control. Additional details of the sale of assets are provided in the letter dated November 24, 2015, and letter dated December 28, 2015 (ML16013A253,) from D. Edward Brown, Vice President – Technical Services, Blackhawk Mining, LLC to Satar Lodhi, Senior Health Physicist, NRC Region 1.

The notice was reviewed by NRC staff and is understood to be a indirect change in control of a 10 CFR Part 30 license using the guidance in NUREG-1556, Volume 15, "Consolidated Guidance about Materials Licenses Program-Specific Guidance about Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Material Licenses," dated November 2000. The NRC staff finds that the information submitted by D. Edward Brown (on behalf of Blackhawk Mining, LLC), sufficiently describes and documents the transaction and commitments made by Patriot Coal Corporation and Blackhawk Mining LLC.

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 notice and finds that the proposed change in control is partially in accordance with the Act. The licensee failed to request and receive approval of the notice prior to transfer of the license and the licensed material. However, the staff finds that,

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<sup>1</sup> ML numbers are accession numbers used in the NRC's Agencywide Documents Access and Management System (ADAMS). Accession numbers can be used to access publicly available documents online at <http://adams.nrc.gov/wba/>.

after the change of control, Blackhawk Mining LLC, and its wholly-owned subsidiaries, Rockwell Mining LLC, Guyandotte Mining, LLC, Panther Creek Mining, LLC, and Blue Creek Mining, LLC, will continue to operate with the same facilities, personnel, equipment and procedures as Patriot Coal and its subsidiaries. Blackhawk Mining, LLC agreed to abide by the existing licenses in letter dated December 28, 2015. Therefore, Blackhawk Mining, LLC and its subsidiaries are qualified to use byproduct material for the purpose requested, and will continue to have the equipment, facilities, and procedures needed to protect public health and safety, and promote the security of licensed material.

## **SAFETY AND SECURITY REVIEW**

According to data obtained from the NRC's Web Based Licensing (WBL) system and Region 1 paper records, License No. 47-24809-01 was issued on October 22, 1985, to Eastern Associated Coal Corporation. The NRC conducted a regional office inspection of Eastern Associated Coal Corporation on August 29, 2012, in Wharton, WV; no violations were identified. The current RSO for this license has been assigned since May 11, 2011.

License No. 47-24917-01 was issued in May 21, 1987, to Arch of West Virginia, and the licensee's name was changed to Apogee Coal Company, d.b.a. Arch of West Virginia, on July 18, 1994, through amendment 2 of the license. The NRC conducted a main office inspection of Apogee Coal Company Corporation on December 9, 2013, in Yolyn, WV; no violations were identified. The current RSO for this license has been assigned since December 18, 2013.

License No. 47-25301-01 was issued on June 30, 1994, to Catenary Coal Company. The NRC conducted a main office inspection of Catenary Coal Company on March 19, 2013, in Ecksdale WV; one Severity Level IV violation was found with corrective actions completed on April 15, 2013. The current RSO for this license has been assigned since October 12, 2004.

License No. 47-31315-01 was issued in November 5, 2008, to Midland Trail Energy. The NRC conducted a main office inspection of Midland Trail Energy on April 30 and May 19 and 28, 2014, in Charleston, West Virginia; one Severity Level IV violation was found with corrective actions completed on June 28, 2014. The current RSO for this license has been assigned since January 10, 2009.

Concerning NRC License Nos. 47-24809-01, 47-24917-01, 47-25301-01, and 47-31315-01, the commitments made by Blackhawk Mining, LLC, as provided in the December 28, 2015, letter, states that none of the existing safety and security requirements in place to date will be substantially affected under the proposed transaction including;

- A. There will not be a change in the Radiation Safety Officers listed in the NRC License Nos. 47-24809-01, 47-25301-01, and 47-31315-01; however, a replacement Radiation Safety Officer (RSO) will be named for NRC License No. 47- 24917-01. The individual being named has training and qualifications commensurate with this position and he is currently the RSO on License No. 47-24809-01 issued to Eastern Associated Coal, LLC.
- B. There will not be a change in the personnel involved in licensed activities;
- C. There will not be a change the locations, facilities, and equipment authorized in the NRC licenses;

- D. There will not be a change the radiation safety program authorized in the NRC licenses; and,
- E. All required surveillance records and decommissioning records will be kept and maintained.

For security purposes, Blackhawk Mining, LLC is considered a known entity following the guidance provided by the NRC's Office of Nuclear Material Safety and Safeguards, (NMSS),<sup>2</sup> "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. Blackhawk Mining, LLC has a wholly-owned subsidiary, Pine Branch Mining LLC that currently holds a radioactive material license (No. 201-626-51) issued by the Commonwealth of Kentucky for radioactive materials and associated devices that are similar to the material and devices authorized by the four licenses held by the Patriot Coal Corporation's wholly-owned subsidiaries.

Pursuant to 10 CFR 30.35, "Financial Assurance and Recordkeeping for Decommissioning," a decommissioning funding plan or financial assurances are not required for the licenses due to the types and quantities of licensed materials authorized for use and possession in NRC License Numbers 47-24809-01, 47-24917-01, 47-25301-01, and 47-31315-01

## **REGULATORY FRAMEWORK**

Patriot Coal Corporation (Patriot), and its wholly-owned subsidiaries, Eastern Associated Coal, LLC, Apogee Coal Company, LLC, Catenary Coal Company, LLC, and Midland Trail Energy NRC Licenses 47-24809-01, 47-24917-01, 47-25301-01, and 47-31315-01, were 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. Blackhawk Mining, LLC's request for consent describes an indirect change of control resulting from the completion of the Chapter 11 restructuring process, on October 28, 2015, whereby Patriot sold the majority of its operating assets to Blackhawk Mining, LLC and, as such, the transfer requires NRC consent.

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<sup>2</sup> Previously the Office of Federal and State Materials and Environment Management Programs (FSME)

## **DESCRIPTION OF TRANSACTION**

The transaction is described in detail in documents available on the NRC Agencywide Document and Access Management System (ADAMS) through accession numbers ML15337A432 and ML16013A253. After completion of the Chapter 11 sale process, on October 28, 2015, whereby Patriot Coal Corporation sold the majority of its operating assets to Blackhawk Mining, LLC. Blackhawk Mining, LLC kept the material at each of the existing four facilities and retained the same personnel but renamed the four wholly-owned subsidiaries. The previous and current names are listed in the table above. 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 in documents by Patriot Coal Corporation and Blackhawk Mining, LLC (ADAMS accession numbers ML15337A432 and ML16013A253 ) sufficiently describe and document the commitments made by Blackhawk Mining, LLC, 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**

Patriot Coal Corporation notified the NRC in a letter dated November 24, 2015 that they had completed the Chapter 11 restructuring process and sold most of Patriot's operating assets to Blackhawk Mining, LLC, including the licensed material. Patriot Coal and Blackhawk Mining, LLC did not request or receive NRC approval prior to the direct transfer of control. In response, the NRC informed Blackhawk Mining, LLC that they must request approval for license transfers and Blackhawk then requested post-hoc approval of the transfers.

The staff has reviewed the request for consent submitted by the parent company (Blackhawk Mining, LLC) of the wholly-owned subsidiaries Rockwell Mining LLC, Guyandotte Mining, LLC, Panther Creek Mining, LLC, and Blue Creek Mining, LLC, with regard to a indirect change of control of byproduct materials under NRC Licenses Nos. 47-24809-01, 47-24917-01, 47-25301-01, and 47-31315-01 and approves the application pursuant to 10 CFR 30.34(b). Despite the transfer of the licenses and licensed material from Patriot Coal to Blackhawk Mining without prior NRC approval, the staff has determined that licensed activities continued with no changes in the personnel, equipment, facilities, or procedures during this period of transition.

The submitted information sufficiently describes the transaction; documents Blackhawk Mining's understanding of the license and commitments; and demonstrates that personnel have the experience and training to properly implement and maintain the license and that they will maintain the existing records.

Therefore, the staff concludes that the proposed change in control would 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.