

**SAFETY EVALUATION REPORT  
PROPOSED CHANGE OF CONTROL FOR BYPRODUCT NRC MATERIALS LICENSE  
NUMBER 47-25566-01, POWER MOUNTAIN COAL COMPANY.**

**DATE:** September 2, 2016

**DOCKET No.:** 030-35744

**LICENSE No.:** 47-25566-01

**CONTROL No.:** 591417

**LICENSEE:** Power Mountain Coal Company  
P.O. Box 707  
Summerville, West Virginia 26651-0707

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

**SUMMARY AND CONCLUSIONS**

Alpha Natural Resources, Inc., and its affiliate, Power Mountain Coal Company are authorized by Nuclear Regulatory Commission (NRC) License 47-25566-01, for the use of byproduct material in fixed gauging devices for elemental analysis of bulk material and for controlling industrial processes.

By letter dated August 13, 2015 (Accession No. ML15251A547)<sup>1</sup>, Alpha Natural Resources, Inc., provided notice to the Nuclear Regulatory Commission that it and substantially all of its affiliates, including Power Mountain Coal Company, had filed voluntary petitions for reorganization in the Bankruptcy Court for the Eastern District of Virginia. As a part of that reorganization, the Bankruptcy Court has approved an asset purchase agreement by which Alpha Natural Resources, Inc., will sell certain assets to its first lien credit holders (Credit Bidders). Pursuant to that agreement, Power Mountain Coal Company is to transfer substantially all of its assets, including the license, to Power Mountain Contura, LLC. Power Mountain Contura, LLC is a wholly-owned, indirect subsidiary of Contura Energy, Inc. The sale is anticipated to close on or about July 25, 2016.

By application dated June 22, 2016 (Accession No. ML16197A071), a request for NRC consent to an indirect license transfer resulting from the completion of the Chapter 11 restructuring process, and control of byproduct materials under NRC License No. 47-25566-01 has been submitted by Contura Energy Inc.'s wholly-owned indirect subsidiary, Power Mountain Contura, LLC.

NRC staff reviewed the request for consent and understood it to be an 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 Christopher L. Ray – Manager and President (on behalf of Power Mountain Contura, LLC), sufficiently describes and documents the transaction and commitments made by Contura Energy, Inc., and its wholly-owned indirect subsidiary Power Mountain Contura, LLC.

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

As required by 10 CFR 30.34 and section 184 of the Atomic Energy Act of 1954, as amended (the Act), NRC staff reviewed the application and finds that the proposed change in control is in accordance with the Act. The NRC staff finds that, after the change of control, Contura Energy, Inc., and its wholly-owned subsidiary, Power Mountain Contura, LLC, remain 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 system and Region 1 paper records, License No. 47-25566-01 was issued on July 13, 2001, to Nicholas Energy Company. The licensee changed its name to Power Mountain Coal Company on December 4, 2013. The NRC conducted an inspection of Nicholas Energy Company on February 8, 2012, in Summersville, WV; one Severity Level IV violation was identified for failing to perform the annual review of the radiation protection program as required by 10 CFR 20.1101. The current Radiation Safety Officer (RSO) for this license has been listed on the license since May 21, 2008.

Concerning NRC License No. 47-25566-01, the commitments made by Power Mountain Contura, LLC, as provided in the June 22, 2016, application, state 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 Officer listed in the NRC License No. 47-25566-01.
- B. There will not be a change in the personnel involved in licensed activities;
- C. There will not be a change of the locations, facilities, and equipment authorized in the NRC licenses;
- D. There will not be a change of the radiation safety program authorized in the NRC licenses; and,
- E. All regulatory required surveillance records and decommissioning records will be kept and maintained.

Based on the information in the preceding paragraphs, for security purposes, Contura Energy, Inc., the parent company of Power Mountain Contura, 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. Contura Energy Inc., has a wholly-owned subsidiary, Contura Energy Services, LLC that currently holds a radioactive material license (License No. 195-371-1),

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

issued by the Commonwealth of Virginia for radioactive materials and associated devices, that is similar to the materials and devices authorized by License No. 47-25566-01.

Pursuant to 10 CFR 30.35, "Financial Assurance and Recordkeeping for Decommissioning," a decommissioning funding plan or financial assurances are not required for the license due to the types and quantities of licensed materials authorized for use and possession in NRC License Number 47-25566-01.

## **REGULATORY FRAMEWORK**

Alpha Natural Resources, Inc., and its affiliate, Power Mountain Coal Co., NRC License 47-25566-01, 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. Power Mountain Contura, LLC's request for consent describes an indirect change of control resulting from the completion of the Chapter 11 restructuring process, whereby Alpha Natural Resources, Inc., and its affiliate Power Mountain Coal Company sold some of their operating assets to Contura Energy, Inc., and its wholly-owned indirect subsidiary Power Mountain Contura, LLC, and, as such, the transfer requires NRC consent.

## **DESCRIPTION OF TRANSACTION**

The transaction in detail is described in documents available on the NRC Agency wide Documents and Access Management System (ADAMS) through Accession Number ML16197A071. After completion of the Chapter 11 restructuring process, on or about July 25, 2016, Alpha Natural Resources, Inc., and its affiliate Power Mountain Coal Company, sold some of its operating assets to Contura Energy, Inc., and its wholly-owned indirect subsidiary Power Mountain Contura, LLC, will have control of all licensed activities under NRC License 47-25566-01. 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 Power Mountain Contura, LLC (Accession No. ML16197A071) sufficiently describes and documents the commitments made by Power Mountain Contura, LLC and is consistent with the guidance in NUREG-1556, Volume 15.

## **ENVIRONMENTAL REVIEW**

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

## **CONCLUSION**

The NRC staff reviewed the request for consent submitted by the parent company Power Mountain Contura, LLC, a wholly-owned indirect subsidiary of Contura Energy, Inc., with regard to an indirect change of control of byproduct materials under NRC License No. 47-25566-01 and approves the application pursuant to 10 CFR 30.34(b).

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

Therefore, the NRC 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.