



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
2100 RENAISSANCE BOULEVARD, SUITE 100
KING OF PRUSSIA, PA 19406-2713

May 24, 2017

Docket No. 03020218
EA No. EA-17-062

License No. 47-23053-01

Douglas McQuaid
Safety Manager
ERP Federal Mining Complex, LLC
1044 Miracle Run Road
Fairview, West Virginia 26570

SUBJECT: NRC INSPECTION REPORT NO. 03020218/2017001, ERP FEDERAL MINING
COMPLEX, LLC, FAIRVIEW, WEST VIRGINIA SITE

Dear Mr. McQuaid:

This letter refers to the inspection conducted on February 12, 2017, at your Fairview, West Virginia facility. The purpose of the inspection was to review the circumstances of an event involving a fixed gauge that became detached from a pipe on February 5, 2017. The enclosed report presents the results of this inspection. A final exit briefing was conducted (telephonically) with you on May 18, 2017.

Based on the results of this inspection, two apparent violations were identified and are being considered for escalated enforcement in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

The apparent violations being considered for escalated enforcement involved: 1) the failure of a specific individual to fulfill the duties and responsibilities of the Radiation Safety Officer (RSO) for the license, as required by License Condition 12 of NRC License 47-23053-01; and 2) the failure to maintain control and constant surveillance of licensed material within a fixed gauge that became detached from a pipe for a period of about four days, as required by 10 CFR 20.1802.

You took appropriate corrective actions after the event and since the onsite inspection that included: 1) sending two individuals to receive RSO training; 2) submitting an amendment request for a change of RSO; and 3) providing initial and annual radiation safety and security awareness training to all individuals granted access to the site. As an additional follow-up action, you committed to develop a pre-maintenance safety review procedure that includes a review of radiation safety and security to be performed by an appropriately trained individual.

The circumstances surrounding these apparent violations, the significance of the issues, and the need for lasting and effective corrective action were discussed with you and members of your staff at the inspection exit meeting on May 18, 2017. As a result, it may not be necessary to conduct a predecisional enforcement conference (PEC) in order to enable the NRC to make an enforcement decision. In addition, since your facility has not been the subject of escalated enforcement actions within the last two inspections, and based on our understanding of your

corrective actions, a civil penalty may not be warranted in this case, in accordance with Section 2.3.4 of the Enforcement Policy.

Before the NRC makes its enforcement decision, we are providing you an opportunity to either (1) respond to the apparent violations in writing, (2) request a PEC, or (3) accept the violations as characterized in this letter and its enclosure (in which case, the NRC will proceed with its enforcement decision). Please contact Blake Welling, Branch Chief, Commercial, Industrial, R&D and Academic Branch at (610) 337-5205 **within 10 days** of the date of this letter, to notify the NRC whether you are interested in providing a written response, attending a PEC, or accepting the violations.

If you choose to provide a written response, it should be sent to the NRC within 30 days of the date of this letter. Your response may reference or include previously docketed correspondence. You should clearly mark the response as a "Response to An Apparent Violation in Inspection Report No. 03020218/2017001, EA 2017-062" and sent to U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555-0001 with a copy to the Regional Administrator, Region I, 2100 Renaissance Boulevard, Suite 100, King of Prussia, PA 19406-2713.

If you choose to request a PEC, the meeting should be held in our office in King of Prussia, PA within 30 days of the date of this letter. The PEC will afford you the opportunity to provide your perspective on the apparent violation and any other information that you believe the NRC should take into consideration before making an enforcement decision. The topics discussed during the conference may include the following: information to determine whether the violation occurred, information to determine the significance of the violation, information related to the identification of the violation, and information related to any corrective actions taken or planned to be taken. The guidance in NRC Information Notice 96-28, "Suggested Guidance Relating to Development and Implementation of Corrective Action," is included on the NRC's website at: <http://www.nrc.gov/reading-rm/doc-collections/gen-comm/info-notices/1996/in96028.html>, may be helpful. If a PEC is held, it will be open for public observation and the NRC will issue a press release to announce the conference time and date.

Please be advised that the number and characterization of the apparent violations described in the enclosed inspection report may change as a result of further NRC review. You will be advised by separate correspondence of the results of our deliberations on this matter.

Current NRC regulations and guidance are included on the NRC's website at www.nrc.gov; select **Nuclear Materials; Med, Ind, & Academic Uses**; then **Regulations, Guidance and Communications**. The current Enforcement Policy is included on the NRC's website at www.nrc.gov; select **About NRC, Organizations & Functions; Office of Enforcement; Enforcement documents**; then **Enforcement Policy (Under 'Related Information')**. You may also obtain these documents by contacting the Government Printing Office (GPO) toll-free

D. McQuaid

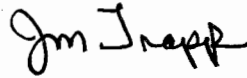
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at 1-866-512-1800. The GPO is open from 8:00 a.m. to 5:30 p.m. EST, Monday through Friday (except Federal holidays).

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://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.

If you have any questions concerning this matter, please contact Michael Reichard of my staff at 610-337-6945.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Trapp". The signature is written in a cursive, slightly slanted style.

James M. Trapp, Director
Division of Nuclear Materials Safety


Enclosure: Inspection Report No. 03020218/2017001

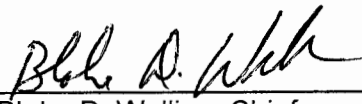
cc: State of West Virginia

U.S. NUCLEAR REGULATORY COMMISSION
REGION I

INSPECTION REPORT

Inspection No. 03020218/2017001
EA No. 17-062
Docket No. 03020218
License No. 47-23053-01
Licensee: ERP Federal Mining Complex, LLC
Address: 1044 Miracle Run Road, Fairview, West Virginia
Inspection Dates: February 12, 2017 through May 18, 2017

Inspector:  5/18/17
Michael Reichard
Health Physicist
Commercial, Industrial, R&D and Academic Branch
Division of Nuclear Materials Safety
date

Approved By:  5/22/17
Blake D. Welling, Chief
Commercial, Industrial, R&D and Academic Branch
Division of Nuclear Materials Safety
date

EXECUTIVE SUMMARY

ERP Federal Mining Complex, LLC
NRC Inspection Report No. 03020218/2017001

This was a special, unannounced inspection to review the circumstances regarding a fixed gauge that became detached from a pipe on February 5, 2017.

ERP Federal Mining Complex's license authorizes possession and use of fixed gauges at 1044 Miracle Run Road, WV. The gauges include sealed sources containing californium-252 and cesium-137.

During the course of the inspection, the inspector determined that the Radiation Safety Officer listed on the license was no longer an employee of ERP Federal Mining Complex, LLC. The inspector also determined that a fixed gauge became detached from the pipe that it had been installed on during an accidental pipe collapse. The licensee correctly instructed workers to not approach the fixed gauge until proper surveys were performed; however, constant surveillance of the fixed gauge was not maintained from the time it became detached until it could be safely moved to a secure location.

Based on the results of the inspection, two apparent violations were identified:

1. Failure of a specific individual to fulfill the duties and responsibilities of the Radiation Safety Officer (RSO) for the license, as required by License Condition 12 of NRC License 47-23053-01; and
2. Failure to maintain control and constant surveillance of licensed material within a fixed gauge that became detached from a pipe for a period of about four days, as required by 10 CFR 20.1802.

ERP Federal Mining took prompt and comprehensive corrective actions for the apparent violations, including:

- sending two individuals to receive RSO training;
- submitting an amendment request for a change of RSO; and
- providing initial and annual radiation safety and security awareness training to all individuals granted access to the site.

The licensee further committed to develop a pre-maintenance safety review procedure that includes a review of radiation safety and security to be performed by an appropriately trained individual.

REPORT DETAILS

I. Organization and Scope of the Program

a. Inspection Scope

The inspector used the Inspection Procedures (IP) 87103 and 87124 to perform the inspection.

b. Observations and Findings

ERP Federal Mining Complex, LLC is authorized under NRC License No. 47-23053-01 to possess and use fixed gauges containing sealed sources of cesium-137 (Cs-137) and californium-252 (Cf-252) for measuring the physical properties of materials. The license authorizes storage and use of these gauges at 1044 Miracle Run Road, Fairview, WV, and for use at temporary jobsites under exclusive Federal jurisdiction.

c. Conclusions

No violations were identified.

II. Event Follow-up

a. Inspection Scope

The inspector reviewed circumstances surrounding a gauge that became detached from a pipe in Fairview, West Virginia. The inspection included interviews of cognizant employees and contractors and observations at the licensee's facility.

b. Observations and Findings

On January 25, 2017, the RSO for ERP Federal Mining Complex, LLC (ERP) left his position with minimal warning. He did not give written notice. He informally told coworkers that he was leaving two to three days before he left.

On Sunday, February 5, 2017, contractor pipefitters were working on a 10-inch heavy-grade pipe that had a Ronan Model SA1-C5 fixed gauge attached to it and contained 100 millicuries (mCi) of Cs-137, a quantity greater than 1,000 times the Appendix C quantity in 10 CFR Part 20. The contractors were approximately ten feet away from the gauge welding patches to areas of the pipe that had rusted, when a section of the pipe collapsed with the gauge still attached. The contractors left the pipe and gauge where it fell and halted work for the day. Most of the licensee's staff was off that day.

On Monday, February 6, 2017, licensee staff realized that the gauge was no longer attached to the pipe. Without consultation of the site safety staff, they moved the device

outside of the immediate work area. The Safety Manager witnessed the activity and instructed them to stop what they were doing and placed the gauge in an area away from workers. At that point, licensee staff realized that this work required oversight by an RSO or an appropriately trained individual, and no current employees were qualified.

ERP contacted a health physics service provider, Kanawha Scales & Systems, who told them to rope off the area around the gauge. The licensee did not maintain control and constant surveillance over the device, but the facility was continuously staffed and the gauge was in a location easily visible from the facility office area, but not immediately adjacent to working areas.

On Thursday, February 9, 2017, the RSO from Kanawha Scales & Systems performed surveys of the device. He determined that radiation levels were as expected, indicating that the shielding was intact. Licensee safety staff moved and secured the gauge to a pallet. The gauge was moved to a storage garage on the licensee's facility to better ensure safety and security. The storage garage was appropriate for securing a fixed gauge. Access to the keys to open the garage was restricted to members of the safety team.

The NRC initiated an on-site inspection on February 15, 2017. The inspector discussed the event, as described above, with cognizant personnel; observed the storage of the device; and reviewed applicable records. The inspector determined that the RSO listed on the license was no longer employed by the licensee, nor did the licensee employ anyone that was appropriately qualified to be RSO. The inspector determined that this hindered the licensee's ability to respond to this issue. Though the fixed gauge was properly stored at the time of the inspection, the inspector determined that it had not been properly stored from February 5, 2017, until February 9, 2017. During that time the licensee did not control and maintain constant surveillance of the device.

Prior to the on-site inspection, but after the event, the licensee scheduled two individuals to take an RSO course in North Carolina on February 21-22, 2017, to ensure that they would have a backup RSO on staff. The email receipt for scheduling the training was available for review at the time of the inspection. The licensee submitted an amendment letter to the NRC for a change of RSO, which was received on April 26, 2017. The licensee committed to providing all employees and contractors initial and annual training regarding radioactive materials. This training was provided to all shifts on February 27, 2017.

On May 5, 2017, the licensee further committed to creating a pre-maintenance safety review procedure that included a section on radiation safety and security. The licensee stated that, at a minimum, the radiation safety and security portion of the pre-maintenance safety review would be performed by an individual who has received RSO training.

c. Conclusions

The following apparent violations were identified during the inspection:

License Condition 12 of NRC License 47-23053-01, dated May 9, 2016, authorized a specific individual to fulfill the duties and responsibilities of the Radiation Safety Officer (RSO) for the license.

Contrary to the above, from January 25, 2017 until April 26, 2017, the Named individual, specifically authorized in Condition 12 of the license to fulfill the duties and responsibilities as RSO, was not employed by the licensee and did not fulfill the responsibilities of the RSO. Specifically, the individual resigned his position on January 25, 2017, and the licensee did not submit an amendment request to the NRC to name a new RSO until April 26, 2017.

As corrective actions, the licensee scheduled two individuals to take an RSO course in North Carolina on February 21-22, 2017. The licensee submitted an amendment letter to the NRC for a change of RSO, which was received on April 26, 2017.

10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

Contrary to the above, from February 5, 2017, through February 9, 2017, ERP Federal Mining Complex, LLC did not control and maintain constant surveillance of licensed material that was in a controlled or unrestricted area. Specifically, a fixed gauge was not continuously monitored when the gauge separated from a pipe on February 5, 2017, until it was transferred to a secure storage location on February 9, 2017.

As a corrective action, the licensee committed to providing all employees and contractors initial and annual training regarding radioactive materials. This training was provided to all shifts on February 27, 2017.

PARTIAL LIST OF PERSONS CONTACTED

Licensee

Douglas McQuaid, Safety Manager
Shane Spencer, Plant Manager
Chad McAtee, General Manager

INSPECTION PROCEDURES USED

87103 and 87124

LIST OF DOCUMENTS REVIEWED

Kanawha Scales & Systems, Service Report, dated February 9, 2017
Leak Test Certificates, various dates
Shutter Check and Inventory Records, various dates