



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION I
2100 RENAISSANCE BLVD., SUITE 100
KING OF PRUSSIA, PA 19406-2713

June 21, 2017

Docket No. 03020218
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: ERP FEDERAL MINING COMPLEX, LLC, NOTICE OF VIOLATION - NRC
INSPECTION REPORT NO. 03020218/2017001

Dear Mr. McQuaid:

This letter provides you the U.S. Nuclear Regulatory Commission's (NRC's) enforcement decision for apparent violations identified during an inspection of licensed activities conducted at the ERP Federal Mining Complex, LLC (ERP) facility in Fairview, West Virginia. The inspection was conducted to review the circumstances of a February 5, 2017, event in which a fixed gauge containing licensed nuclear material became detached from the pipe to which it had been affixed. The NRC discussed the apparent violations during a telephonic exit meeting with you on May 18, 2017. The apparent violations were also described in the NRC inspection report sent to you with a letter dated May 24, 2017 (ML17145A438)¹.

In the letter transmitting the NRC inspection report, we provided you an opportunity to address the apparent violations by either attending a pre-decisional enforcement conference (PEC) or by providing a written response before we made our final enforcement decision. In the letter, we also informed you that we had sufficient information regarding the apparent violations and ERP's corrective actions to make an enforcement decision without the need for a PEC. In a telephone call on June 2, 2017, you informed Mr. Blake Welling, Chief, Commercial, Industrial, R&D, and Academic Branch that ERP did not request a PEC and did not intend to provide a written response.

Therefore, based on the information developed during the inspection, the NRC has determined that two violations of NRC requirements occurred. The violations, which are cited in the enclosed Notice of Violation (Notice) and are described in detail in the subject inspection report, involved ERP's failures to: (1) assign a specific individual to fulfill the duties and responsibilities of Radiation Safety Officer (RSO) after the previous RSO resigned; and (2) maintain control and constant surveillance of licensed material (within the fixed gauge) for approximately four days after it became detached from the pipe.

¹ Designation in parentheses refers to an Agency-wide Documents Access and Management System (ADAMS) accession number. Documents referenced in this letter are publicly-available using the accession number in ADAMS.

Specifically, the previous RSO ceased employment with ERP in January 2017, after informally resigning. Approximately one week later, workers were welding on the pipe to which the fixed gauge (with a closed shutter) was attached. While the welding activities were taking place, the pipe collapsed, and work was stopped. The welders had not been aware of the presence of the gauge. The following day, ERP personnel identified that the gauge had dislodged from the pipe and, at that time, also identified that the RSO had apparently resigned. After moving the gauge to an area away from workers, ERP hired a contractor RSO, who assisted the licensee with properly securing the gauge. The NRC considered that, without an RSO, ERP did not have an individual onsite who had been trained on how to properly control the gauge, resulting in the licensee's failure, for four days to properly secure the device. While there were no actual radiological consequences, this event could have resulted in unplanned radiation exposure, spread of contamination, or loss of licensed nuclear material. Therefore, the violations have been categorized at Severity Level III (SL III) in accordance with the NRC Enforcement Policy. This severity level corresponds to violations that resulted in or could have resulted in moderate safety or security consequences. Additionally, because the violations were related, in that the failure to have an RSO contributed to the failure to control the gauge, the NRC is citing them together as a single SL III problem.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$7,000 is considered for a SL III problem. Because your facility has not been the subject of escalated enforcement action within either the last two years or the two most recent inspections, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy. The NRC has concluded that credit is warranted for ERP's corrective actions. Specifically, ERP: (1) arranged for additional employees to receive RSO training; (2) submitted an amendment request to the NRC to have a new RSO named on ERP's license; and (3) committed to provide initial and annual radiation safety and security awareness training to all individuals granted access to the ERP site. In addition to these actions, ERP also 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. Therefore, to encourage prompt and comprehensive correction of violations of NRC requirements, and in recognition of the absence of previous escalated enforcement action, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case. Issuance of this SL III problem constitutes an escalated enforcement action that may subject you to increased inspection effort.

The NRC has concluded that information regarding: (1) the reason for the violations; (2) the actions planned or already taken to correct the violations and prevent recurrence; and, (3) the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 03020218/2017001. Therefore, you are not required to respond to this letter unless the description therein 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 of Violation.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Website at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response, if you choose to provide one, should not include any personal privacy, proprietary, or safeguards

information so that it can be made available to the Public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such information, you must specifically identify the portions of your response that you seek to have withheld, and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information).

The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

Sincerely,

A handwritten signature in black ink, appearing to read "D. Dorman", followed by the word "for" in a smaller, cursive script.

Daniel H. Dorman
Regional Administrator

Enclosure:
Notice of Violation

cc w/enclosure: State of West Virginia

NOTICE OF VIOLATION

ERP Federal Mining Complex, LLC
Fairview, WV 26570

Docket No. 03020218
License No. 47-23053-01
EA-17-062

During an NRC inspection conducted on February 12, 2017, with continued in-office review through May 18, 2017, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. License Condition 12 of NRC License No. 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 licensee did not have an individual assigned to fulfill the duties and responsibilities as the RSO for the license. Specifically, on January 25, 2017, the individual named as the RSO in Condition 12 of the license, resigned from employment with the licensee, and the licensee did not submit an amendment request to the NRC to name a new RSO until April 26, 2017.

- B. 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, the licensee did not control and maintain constant surveillance of licensed material that is 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.

This is a Severity Level III problem (Enforcement Policy Sections 6.3 and 6.7)

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence and the date when full compliance was achieved is already adequately addressed on the docket in Inspection Report No. 03020218/2017001. 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, (EA-17-062)" and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with a copy to the Regional Administrator, U.S., Nuclear Regulatory Commission, Region I, 2100 Renaissance Boulevard, King of Prussia, PA 19406, within 30 days of the date of the letter transmitting this Notice of Violation.

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or in the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. Therefore, to the extent possible, the response

should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

In accordance with 10 CFR 19.11, you are required to post this Notice within two working days of receipt.

Dated this 21st day of June 2017