

**SAFETY EVALUATION REPORT
PROPOSED CHANGE OF CONTROL FOR BYPRODUCT MATERIALS LICENSE
NUMBER 13-35286-01, ERP Iron Ore, LLC.**

DATE: June 19, 2017

DOCKET NO.: 030-38920

LICENSE NO.: 13-35286-01

LICENSEE: ERP Iron Ore, LLC
64 E 100 N
Reynolds, IN 47980

TECHNICAL REVIEWER: Laura B. Cender

SUMMARY AND CONCLUSIONS

Mag Pellet is authorized by NRC License No. 13-35286-01 for the possession and use of byproduct material for purposes permitted by 10 CFR Part 30. The U.S. Nuclear Regulatory Commission (NRC) staff reviewed a request for consent to a direct license transfer submitted by ERP Iron Ore, LLC that will result from a sale between Mag Pellet and ERP Iron Ore, LLC. On May 5, 2015, Magnetation LLC and its direct subsidiaries including Mag Pellet filed Chapter 11 voluntary petitions for restructuring with the United States Bankruptcy Court, District of Minnesota (case number 15-50307). On December 6, 2016, Magnetation LLC filed a motion requesting expedited relief approving the sale and transfer of assets and liabilities, including the Mag Pellet facility, to ERP Iron Ore, LLC. On January 30, 2017 the agreement between Magnetation LLC and ERP Iron Ore, LLC was finalized and a Notice of Closing of Sale filed with the court.

The request for consent was reviewed by NRC staff for a direct change in control of a 10 CFR Part 30 license using the guidance in NUREG 1556, Volume 15, Revision 1, "Consolidated Guidance About Materials Licenses - Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses." The NRC staff finds that the information submitted by ERP Iron Ore, LLC sufficiently describes and documents the transaction and commitments made by ERP Iron Ore, LLC and Mag Pellet.

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 proposed change in control is in accordance with the Act. The staff finds that, after the change of control, ERP Iron Ore, LLC will be qualified to use byproduct material for the purpose requested, and will 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 Web Based Licensing System (WBL), Mag Pellet has been an NRC licensee since August 4, 2016. The NRC conducted a main office inspection of Mag Pellet on October 11, 2016, however in early October of 2016 plant operations had been halted due to economic factors and the ongoing bankruptcy proceedings. The NRC inspector met with the licensee Radiation Safety Officer and toured the facility and confirmed that

appropriate radiation safety measures were in place during the plants transition to an idle state. The commitments made by ERP Iron Ore, LLC and Mag Pellet state that ERP Iron Ore, LLC (License No. 13-35286-01):

- A. will change the radiation safety officer listed in the NRC license to Mark Luttrell;
- B. will change the personnel involved in licensed activities to include Danny Phillips;
- 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. will change the organization's name listed in the NRC license to ERP Iron Ore, LLC;
- F. will keep regulatory required surveillance records and decommissioning records; and

ERP Iron Ore, LLC is a subsidiary of ERP Compliant Fuels, LLC – the majority controlling company (75%) of the ERP Federal Mining Complex, LLC, a current NRC license holder (License Number 47-23053-01). Additionally, ERP Iron Ore, LLC provided a general license registration issued by the State of Minnesota for fixed gauge devices at the companies Grand Rapids, MN facility. Therefore, for security purposes, ERP Iron Ore, LLC is considered a known entity following the guidance provided by the NRC's Office of Nuclear Material Safety and Safeguards (NMSS) '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.

ERP Iron Ore, LLC, is not required to have decommissioning financial assurance based on the types and amount of material authorized in License No. 13-35286-01.

REGULATORY FRAMEWORK

Mag Pellet's License No. 13-35286-01, 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, Revision 1. As discussed in NUREG-1556, Volume 15, Revision 1, 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. ERP Iron Ore, LLC's request for consent

describes a direct change of control resulting from a sale between Mag Pellet's parent company Magnetation, LLC and ERP Iron Ore, LLC and, as such, the transfer requires NRC consent.

DESCRIPTION OF TRANSACTION

The transaction is described in ADAMS accession number ML17143A452. After completion of the sale, ERP Iron Ore, LLC will become the licensee and assume control of all licensed activities under Materials License No. 13-35286-01. 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 E of NUREG-1556, Volume 15, Revision 1.

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

The NRC staff finds that the information submitted by ERP Iron Ore, LLC sufficiently describes and documents the commitments made by ERP Iron Ore, LLC and Mag Pellet, and is consistent with the guidance in NUREG-1556, Volume 15, Revision 1.

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 both parties with regard to an indirect change of control of byproduct materials license No. 13-35286-01 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, Revision 1.

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.