

SAFETY EVALUATION REPORT
TRANSFER OF CONTROL FOR BYPRODUCT MATERIALS LICENSE NUMBER 47-30927-01, HIGHLAND MINING COMPANY, INC., TO LEXINGTON COAL COMPANY, LLC

DATE: March 8, 2018

DOCKET NO.: 030-36608

LICENSE NO.: 47-30927-01

LICENSEE: Highland Mining Company
P.O. Box 1098
Holden, West Virginia 25625

TECHNICAL REVIEWER: Randolph C. Ragland, Jr.

SUMMARY AND CONCLUSIONS

Highland Mining Company is authorized by NRC License 47-30927-01 for the possession and use of byproduct material for use in fixed gauging devices for controlling industrial processes.

By letter dated November 30, 2017, Highland Mining Company, Inc., and Lexington Coal Company, LLC, jointly requested the consent of the Nuclear Regulatory Commission (NRC) to a direct transfer of control of Material License No. 47-30927-01, from the Highland Mining Company, Inc., to Lexington Coal Company, LLC, in conjunction with the purchase and sale of certain assets from Highland Mining to Lexington Coal and requested a change in the Radiation Safety Officer.

Also, by letter dated November 30, 2017, Highland Mining Company, Inc. and Lexington Coal Company, Inc. reported that although the effective date of the purchase agreement, including assumption of liabilities by Lexington Coal Company, LLC, was on October 23, 2017, Highland Mining Company Inc. continues to have the right to exercise authority over the NRC License until the U.S. Nuclear Regulatory Commission – Region I approved the transfer of the NRC license to Lexington Coal Company.

Subsequent to this request, Highland Mining Company, Inc. and Lexington Coal Company provided a copy of a "Permit Transfer Agreement" (dated October 11, 2017, between Highland Mining Company, Inc. and Lexington Coal Company, LLC, which stated that the Transferors (i.e., Highland Mining Company, Inc.) shall have (and Transferee grants) all rights of entry onto the Purchased Real Property necessary for the Transferors to maintain the permits and a clause stating that the Transferors, at all times prior to the transfer of the Permits to Transferee, shall comply with all applicable laws and administrative requirements pertaining to maintaining the permits in good standing.

Section 184 of the Atomic Energy Act of 1954, as amended, prohibits the transfer of control of any license unless the Commission finds that the transfer is in accordance with the Act and consents to the transfer in writing. The direct transfer of control is described in several submissions by Highland Mining Company, Inc. and Lexington Coal Company, Inc., accessible at Agency Documents Access and Management System (ADAMS) accession numbers ML17352A035, ML18066A032, and ML18066A026.

The request for consent was reviewed by NRC staff. The NRC staff applied 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," dated June 2016, and determined that the transfer is a direct transfer of control. This information was reviewed by NRC staff to determine if Lexington Coal Company, LLC, could continue to maintain a safe and secure fixed gauge program while satisfying license and regulatory requirements. The review was performed in accordance with NUREG-1556, Volume 4, Revision 1, "Consolidated Guidance About Material Licenses, Program-Specific Guidance About Fixed Gauge Licenses." The staff determined that Lexington Coal Company, LLC., possessed a State of Kentucky license (No. 201-564-56) for a fixed gauge program, their license was in good standing at the time of the request, and the proposed Radiation Safety Officer had training and experience as a Radiation Safety Officer on a State of Kentucky fixed gauge license. The NRC staff finds that the information submitted by Highland Mining Company, Inc., and Lexington Coal Company, LLC, sufficiently describes and documents, the transaction, and commitments made by Highland Mining Company, Inc. and Lexington Coal Company, 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 application and finds that the proposed transfer in control and change in Radiation Safety Office is in accordance with the Act. The staff finds that, after the transfer of control, Lexington Coal Company, LLC, will 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 NRC's Agencywide Documents Access and Management System (ADAMS), Highland Mining Company, Inc. has been an NRC licensee since January 8, 2014. The NRC conducted inspections of Highland Mining Company, Inc.'s NRC materials License No. 47-30927-01, on June 11, 2014, (Inspection No. 03033129/2014001), and on January 30, 2018, (Inspection No. 03033129/2018001). During those inspections, no in-plant operational safety or security violations of NRC requirements were identified

With respect to future operations, the commitments made by Highland Mining Company and Lexington Coal Company, LLC state that Lexington Coal Company, LLC, (License No. 47-30927-01):

- A. will change the radiation safety officer listed in the NRC license to James Fitzpatrick;
- B. will change management oversight personnel (i.e., plant management) involved in licensed activities;
- 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; and
- F. will keep regulatory required surveillance records and decommissioning records.

Lexington Coal Company is a former State of Kentucky Radioactive Material licensee (License No. 201-564-56), who maintained a State of Kentucky license for their #1 Prep Plant located at 115 North Big Creek Road, Sidney, Kentucky. By letter dated January 24, 2018, Lexington Coal Company requested termination of their State of Kentucky license and provided documentation that all of their licensed gauges were properly transferred to licensed facilities for disposal. James Fitzpatrick was the Radiation Safety Officer for the Kentucky license and Mr. Fitzpatrick is the proposed RSO for the West Virginia license. According to Marissa Vega Velez, Radiation Health Specialist III, with the State of Kentucky, Lexington Coal Company, LLC received a Notice of Compliance (i.e., clear inspection) in May 2015, and was in good standing when the license was terminated on January 31, 2018. Therefore, for security purposes, Lexington Coal Company, LLC, is considered a known entity following the guidance provided by the NRC's Office of Federal and State Materials and Environmental Management Programs (FSME) '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 licensees transferring control of licensed activities that the licensed material will be used for its intended purpose and not for malevolent use. In addition, because Mr. James Fitzpatrick was the named Radiation Safety Officer on the former State of Kentucky fixed gauge license (No. 201-564-56) that was in good standing at the time of the transfer request 2018, Mr. Fitzpatrick meets NRC training and experience requirements to be named as the Radiation Safety Officer on the transferred license.

Lexington Coal Company, LLC, is not required to have decommissioning financial assurance based on the types and amount of material authorized in License No. 47-30927-01.

REGULATORY FRAMEWORK

Section 184 of the Atomic Energy Act of 1954, as amended, prohibits the transfer of control of any license unless the Commission finds that the transfer is in accordance with the Act and consents to the transfer in writing.

Highland Mining Company, Inc., License No. 47-30927-01, was issued under 10 CFR Part 30, Rules of General Applicability to Domestic Licensing of Byproduct Material.

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 associated with the transfer of control is based on guidance in NUREG 1556, Volume 15, Revision 1. The central issue when determining whether a license is transferred is whether the authority over the license has changed. Highland Mining Company, Inc.'s request for consent describes a direct transfer of control of the NRC license to Lexington Coal Company, LLC, including their NRC licensed program, and as such, the transfer requires NRC consent.

As previously indicated, the staff evaluation associated with the proposed Radiation Safety Officer was performed in accordance with the guidance in NUREG-1556, Volume 4, Revision 1, "Consolidated Guidance About Materials Licenses – Program-Specific Guidance About Fixed Gauge Licenses," dated June 2016.

Because Lexington Coal Company, LLC., previously maintained a State of Kentucky license (No. 201-564-56) for a fixed gauge program, their license was in good standing at the time of the request, and the proposed Radiation Safety Officer on the State of Kentucky license met licensing requirements as stated in NUREG-1556, Volume 4, Revision 1, "Consolidated Guidance About Materials Licenses – Program-Specific Guidance About Fixed Gauge Licenses," dated July 2016. Therefore, the NRC does not object to the transfer of assets which occurred on October 23, 2017, consents to the transfer of NRC License No. 47-30927-01 and the licensed program to Lexington Coal Company, LLC, and will amend the license with the new company name and Radiation Safety Officer in March 2018.

DESCRIPTION OF TRANSACTION

The transaction is described in ADAMS accession numbers ML17352A035, ML18066A032, and ML18066A026. After NRC consent is granted, Lexington Coal Company, LLC will continue as the licensee and remain in control of all licensed activities under Materials License No. 47-30927-01. However, the license will be amended to reflect the new licensee's name and address, and the new Radiation Safety Officer. 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, Revision 1.

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

The NRC staff finds that the information submitted by Alpha Natural Resources, Highland Mining Company, Inc., and Lexington Coal Company, LLC, sufficiently describes and documents the commitments made by Highland Mining Company, Inc. and Lexington Coal Company, LLC 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)(21).

CONCLUSION

The staff has reviewed the request for consent submitted by both parties with regard to an direct transfer of control of byproduct materials license No. 47-30927-01 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, including the proposed Radiation Safety Officer, 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 transfer of assets which occurred on October 23, 2017, and the transfer of the licensed program which will occur in March 2018, will 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, and NRC will amend the license with the new company name and Radiation Safety Officer.

Therefore, the staff concludes that the transfer of assets which occurred on October 23, 2017, and the transfer of the licensed program which will occur in March 2018, will 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, and NRC will amend the license with the new company name and Radiation Safety Officer.

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SUNSI Review Complete: R. Ragland

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OFFICE	RI:DNMS	OGC				
NAME	R. Ragland <i>RR</i>	NLO, K. Roach via email	L Wardrobe <i>LW</i>			
DATE	3/8/2018	March 6, 2018	3/8/2018			

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