

SAFETY EVALUATION REPORT
PROPOSED LICENSE AMENDMENT, TRANSFER OF INDIRECT CONTROL AND
CHANGE OF RADIATION SAFETY OFFICER IN COWEN, WEST VIRGINIA, FOR NRC
BYPRODUCT MATERIALS LICENSE NUMBER 47-25581-02, BROOKS RUN MINING
COMPANY, LLC

DATE: June 5, 2018

DOCKET NO.: 030-38704

LICENSE NO.: 47-25581-02

LICENSEE: Brooks Run Mining Company, LLC
2691 Little Birch Road
Sutton, West Virginia 26601

TECHNICAL REVIEWER: Dennis Lawyer

SUMMARY AND CONCLUSIONS

Brooks Run Mining Company, LLC holds a byproduct materials license issued by U.S. Nuclear Regulatory (NRC). Under NRC Materials License 47-25581-02, Brooks Run Mining Company, LLC is authorized to possess and use byproduct material for purposes of using fixed gauging devices to control industrial processes and perform elemental analysis of bulk material at their facilities in Cowen, West Virginia.

By letter dated March 5, 2018, Agencywide Documents Access and Management System (ADAMS) Accession Number ML18078A145, Amfire Holdings and Amfire, LLC, the owners of Brooks Run Mining Company, LLC, requested the NRC's consent to an indirect transfer of control of the above license from Amfire Holding and Amfire, LLC to Pristine Clean Energy, LLC. As a part of the transfer of control, Brooks Run Mining Company, LLC requested a change in the radiation safety officer. Brooks Run Mining Company, LLC and Pristine Clean Energy, LLC completed this transaction without first requesting and obtaining the NRC's prior written approval. However, Amfire Holdings and Amfire, LLC is maintaining control of the license program until the Commission has reviewed and approved of the transfer.

The request for consent was reviewed by NRC staff for an indirect transfer of control of a 10 CFR Part 30 licensee 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," dated June 2016. The NRC staff finds that the information submitted by Amfire Holdings, LLC, Amfire, LLC, Pristine Clean Energy, LLC, and Brooks Run Mining Company, LLC, sufficiently describes and documents the transaction and commitments made by Brooks Run Mining Company, LLC.

Brooks Run Mining Company, LLC, also requested a license amendment to authorize the Change in the Radiation Safety Officer. NRC staff reviewed this license amendment request in accordance with NUREG-1556, Volume 4, Revision 1, "Consolidated Guidance About Materials Licenses – Program-Specific Guidance About Fixed Gauge Licenses," dated July 2016. The NRC staff finds that the information submitted by Brooks Run Mining Company, LLC, in the

letter dated May 16, 2018 (ML18144A922), sufficiently describes and documents the training of the proposed Radiation Safety Officer.

As required by 10 CFR 30.34 and section 184 of the Atomic Energy Act, as amended (the Act), NRC staff has reviewed the application and finds that the transfer of control and change in the Radiation Safety Officer is in accordance with the Act. The staff finds that Brooks Run Mining Company, LLC may continue to use byproduct material for the purpose requested and has the equipment, facilities, and procedures needed to protect public health and safety, and promote the common defense and security.

SAFETY AND SECURITY REVIEW

According to the data obtained from the NRC's Web Based Licensing (WBL), Brooks Run Mining Company, LLC has been an NRC licensee since January 16, 2014. The NRC conducted a main office inspection of Brooks Run Mining Company, LLC on June 5, 2014, for NRC Materials License No. 47-25581-02, and no violations were identified during the inspection. The commitments made by Brooks Run Mining Company, LLC state that under the transaction the following did not change:

- A. the locations, facilities, and equipment authorized in the NRC license;
- B. the radiation safety program authorized in the NRC license; or
- C. the maintenance of required surveillance records and decommissioning records.

Brooks Run Mining Company, LLC is changing the Radiation Safety Officer. This change does require a license amendment.

The transfer in ownership occurred on October 5, 2017. A licensing visit was performed on April 3, 2018, because Pristine Clean Energy, LLC was not considered a known entity. The pre-licensing visit followed 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 aspect of the review is for the NRC to obtain reasonable assurance from new license applicants or NRC license transferees that the licensed material will be used for its intended purpose and not for malevolent use. Based on the licensing visit, the NRC has confirmed that there is reasonable assurance that Brooks Run Mining Company, LLC will use the licensed material for its intended purpose and not for malevolent use. Also based on the pre-licensing visit the NRC has confirmed that Pristine Clean Energy, LLC understands Brooks Run Mining Companies requirements for licensed operations.

Brooks Run Mining Company, LLC is not required to have decommissioning financial assurance based on the types and amount of material authorized in NRC Materials License No. 47-25581-02.

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.

Brooks Run Mining Company, LLC's NRC Materials License No. 47-25581-02, was issued under 10 CFR Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material." The NRC 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."

10 CFR 30.34(c) states, in part: "Each person licensed by the Commission pursuant to the regulations in this part and parts 31 through 36 and 39 shall confine his possession and use of the byproduct material to the locations and purposes authorized in the license."

10 CFR 30.38 states, in part: "Applications for amendment of a license must be filed in accordance with 10 CFR 30.32 and must specify the respects in which the licensee desires its license to be amended and the grounds for the amendment."

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 indirectly transferred is whether the authority over the license has changed. Amfire Holdings and Amfire, LLC's, the owners of Brooks Run Mining Company, LLC, request for consent describes an indirect transfer of control of the NRC license held by Brooks Run Mining Company, LLC, resulting from ownership change of Brooks Run Mining Company, LLC from Amfire Holdings and Amfire, LLC to Pristine Clean Energy, LLC. Following the sale, Brooks Run Mining Company, LLC continues the licensed activities but is owned by Pristine Clean Energy, LLC, and, as such, the transfer requires the NRC's consent.

As previously indicated, the staff evaluation associated with the Radiation Safety Officer showed that his training 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 July 2016." Following the amendment, the proposed Radiation Safety Officer will be listed.

DESCRIPTION OF TRANSACTION

The transaction is described in ADAMS accession number ML18078A145. After completion of the sale, Pristine Clean Energy, LLC owns Brooks Run Mining Company and continues the activities described under the license and is in control of all licensed activities under NRC Materials License No. 47-25581-02. 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 section 5 and Appendix E of NUREG-1556, Volume 15, Revision 1.

The amendment, which reflects Brooks Run Mining Company, LLC as the licensee, will include the new Radiation Safety Officer.

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

The NRC staff finds that the information submitted by Pristine Clean Energy, LLC sufficiently describes the transaction; documents the licensee's commitments; and demonstrates that licensee personnel have the experience and training to properly implement and maintain the license and that they will maintain the existing records.

The submitted information also demonstrates that the licensee will abide by all existing commitments in the license, consistent with the guidance in NUREG-1556, Volume 15, Revision 1.

CHANGE OF RADIATION SAFETY OFFICER

The NRC staff finds that the information submitted by Brooks Run Mining Company, LLC, in the letter dated May 16, 2018, sufficiently describes and documents the training of the proposed Radiation Safety Officer. The NRC staff reviewed the qualifications and found them acceptable in accordance with NUREG-1556, Volume 4, Revision 1.

ENVIRONMENTAL REVIEW

An environmental assessment for transfer of control is not required since this action is categorically excluded under 10 CFR 51.22(c)(21). An environmental assessment for changing the radiation safety officer is not required since this action is categorically excluded under 10 CFR 51.22(c)(10)(iv).

CONCLUSION

The NRC staff has reviewed the request for consent submitted by Amfire Holdings, LLC and Amfire, LLC with regard to an indirect transfer of control of NRC Materials License No. 47-25581-02 pursuant to 10 CFR 30.34(b), and consents to the proposed indirect transfer of control.

The submitted information sufficiently describes the transaction, documents the Licensee's commitments, and demonstrates that personnel have the experience and training to properly implement and maintain the license and that they will maintain the existing records. The submitted information also demonstrates that the licensee will abide by all existing commitments in the license, consistent with the guidance in NUREG-1556, Volume 15, Rev 1.

The NRC staff has reviewed the request for an amendment to change the Radiation Safety Officer and finds the proposed individual is qualified by training and experience to be the Radiation Safety Officer on this license.

Therefore, the staff concludes that the proposed transfer of control, license amendment, and changing the Radiation Safety Officer 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.