

**SAFETY EVALUATION REPORT
TRANSFER OF CONTROL FOR BYPRODUCT MATERIALS LICENSE NUMBER
47- 25327-01, FIBREK RECYCLING U.S. INC., TO ND FAIRMONT, LLC**

DATE: March 14, 2019

DOCKET NO.: 030-33817

LICENSE NO.: 47-25327-01

LICENSEE: Fibrek Recycling U.S. Inc.
702 AFR Drive
Fairmont, WV 26554

TECHNICAL REVIEWER: Randolph C. Ragland, Jr.

SUMMARY AND CONCLUSIONS

Fibrek Recycling U.S. Inc. is authorized by NRC License No. 47-25327-01 for the possession and use of byproduct material for use in fixed gauging devices for controlling industrial processes permitted under 10 CFR 30.33.

By letter dated September 17, 2018 (ML18276A239), Fibrek Recycling U.S. Inc., (Fibrek) and ND Fairmont LLC (ND Fairmont), jointly requested the consent of the Nuclear Regulatory Commission (NRC) to a direct transfer of control of Material License No. 47-25327-01 from Fibrek to ND Fairmont, in conjunction with the transactions contemplated in an Asset Purchase Agreement dated August 29, 2018, relating to the purchase and sale of substantially all assets associated with the operation of Fibrek's recycled bleached draft pulp mill located in Fairmont, West Virginia.

Anticipating that NRC approval would not be received by the proposed October 31, 2018, transaction closing date, by letter dated October 18, 2018, both parties informed the NRC that they had entered into a control agreement, which provides that Fibrek will continue to maintain control of the NRC license during the interim period between the anticipated transaction closing date and the date on which NRC approval is received. Because Fibrek's Radiation Safety Officer will become an employee to ND Fairmont when the sale is finalized, Fibrek also submitted the name of a qualified individual to act as the Radiation Safety Officer during the interim period, described in Agency Documents Access and Management System (ADAMS) accession number ML19063A810. On December 4, 2018, Fibrek's NRC license was amended (amendment number 12) to name a new "interim" Radiation Safety Officer for NRC License No. 47-25327-01 (ML18360A580). The interim Radiation Safety Officer will only serve until such time that the NRC consents to the transfer of control.

Section 184 of the Atomic Energy Act of 1954, as amended (the Act), 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 Fibrek's and ND Fairmont's letters dated September 17, 2018 (ML 18276A239), October 18, 2018 (ML18341A203), and December 7, 2018 (ML19063A812).

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. The request and associated Control agreement provided by Fibrek, ND Fairmont, and the additional information provided by the state of Wisconsin (ML19063A813) were reviewed by NRC staff to determine if ND Fairmont 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." Based on this review, the NRC staff finds that the information submitted by Fibrek and ND Fairmont sufficiently describes and documents the transaction and commitments made by Fibrek and ND Fairmont.

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 of control is in accordance with the Act. The staff finds that, after the transfer of control, ND Fairmont will remain qualified to use byproduct material for the purpose requested, will have the same Radiation Safety Officer as listed in Fibrek's NRC License No. 47-25327-01, Amendment 11, and will continue to have and maintain 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 data obtained from ADAMS, Fibrek has been an NRC Licensee since September 28, 2006. On September 28, 2006, NRC License 47-25327-01, was transferred to SKF Pulp (ML062750216), and on June 30, 2011, NRC processed License No. 47-25327-01, Amendment 9 (ML111810611) that changed the licensee name to Fibrek. The NRC conducted inspections of Fibrek's NRC licensed activities at their Fairmont, WV facility in February 2010, (Inspection No. 03033817/2010001) and January and February 2015, (Inspection No. 03033817/2015001) and no in-plant operational safety or security violations of NRC requirements were identified.

Fibrek and ND Paper's September 17, 2018, Request for Written Consent to Transfer (ML18276A239) stated that ND Fairmont's parent company, ND Paper LLC owns a subsidiary who currently possesses a state of Wisconsin radioactive materials license, and that license is in good standing (ML19063A813). In May 2018, Catalyst Paper Operations, Inc. (now ND Paper Inc., Biron Division) announced that they had entered into a Sales and Purchase agreement with ND Paper LLC (finalized on June 29, 2018), which included the sale of Catalyst Paper's Biron Mill in Biron, Wisconsin. The Biron Mill facility is authorized by the State of Wisconsin, Bureau of Environmental Health, Radiation Protection Section, to possess and operate fixed radioactive gauges under Wisconsin License No. 141-2060-01. In response to the sales and purchase agreement, the state of Wisconsin conducted a review and determined that ND Paper, Inc. Biron Mill Division would use the gauges as intended and authorized the transfer of control from Catalyst Paper to ND Paper LLC. A representative from the State of Wisconsin Department of Health Services, Radiation Protection Section, stated that ND Paper Inc., Biron Division's license is current, there was nothing of concern in their inspection history, and the license is in good standing (ML19063A813).

With respect to future operations, the commitments made by Fibrek and ND Fairmont state that ND Fairmont (License No. 47-25327-01):

- A. will not change the radiation safety officer utilized by Fibrek before the sale agreement;
- B. will not 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 keep regulatory required surveillance records and decommissioning records; and
- F. will change the organizations name listed in the NRC license.

Because ND Paper LLC is currently the parent company to a subsidiary (i.e., ND Paper, Biron Division, in Biron, Wisconsin), and that subsidiary maintains an active radioactive fixed gauge license under the jurisdiction of the State of Wisconsin, Department of Health Services, Radioactive Material License No. 141-2060-01), and that license is in good standing, for security purposes, ND Fairmont 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 Application," August 9, 2018, 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, once NRC consents to the transfer of control, Ms. Ericka Aversa will be reinstated as the Radiation Safety Officer on ND Fairmont's NRC license. Ms. Aversa was previously listed as the Radiation Safety Officer on Fibrek's NRC License No. 47-25327-01, Amendment 11. Based on Ms. Aversa's experience as Fibrek's Radiation Safety Officer and her 40 hour Radiation Safety Officer training certificate submitted to NRC by Fibrek letter dated November 3, 2016 (ML16330A628), Ms. Aversa meets NRC guidance presented in NUREG 1556, Vol. 4, Rev. 1, to be named as the Radiation Safety Officer on ND Fairmont LLC's license.

ND Fairmont LLC, is not required to have decommissioning financial assurance based on the types and amount of material authorized in License No. 47-25327-01.

REGULATORY FRAMEWORK

Fibrek's NRC License No. 47-25327-01 was issued under 10 CFR Part 30, Rules of General Applicability to Domestic Licensing of Byproduct Material. 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 Commission is required by 10 CFR 30.34 to determine if the transfer of control is in accordance with the provisions of the Act and gives its consent in writing.

Specifically, 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. Fibrek's request for consent describes a direct transfer of control of the NRC license to ND Fairmont LLC, including their NRC licensed program, and, as such, the transfer requires NRC consent.

As previously indicated, the staff evaluation associated with ND Fairmont's 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.

Based on the above evaluation, NRC has determined that ND Fairmont LLC will utilize fixed gauges as intended to perform level or density measurements, and will operate, and maintain a fixed gauge program in accordance with NRC regulatory and license requirements. Therefore, the NRC does not object to the transfer of assets, which occurred on October 31, 2018, and will amend the license with the new company name and reinstate the previous Radiation Safety Officer.

DESCRIPTION OF TRANSACTION

The direct transfer of control is described in Fibrek's and ND Fairmont's letters dated September 17, 2018 (ML 18276A239), October 18, 2018 (ML18341A203), and December 7, 2018 (ML19063A812). After NRC consent is granted, ND Fairmont will continue as the licensee and remain in control of all licensed activities under Materials License No. 47-25327-01. However, the license will be amended to reflect the new licensee's name and address, and the Fibrek Radiation Safety Officer, listed in NRC License No. 47-25327-01, Amendment No. 11, will be reinstated. 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 Fibrek and ND Fairmont sufficiently describes and documents the commitments made by Fibrek and ND Fairmont 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 the direct transfer of control of byproduct materials License No. 47-25327-01 and consents to the transaction pursuant to 10 CFR 30.34(b).

Consistent with the guidance in NUREG-1556, Volume 15, Revision 1, the submitted information sufficiently describes the transaction; documents the understanding of the license and commitments of the transferee; 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 provides that, in the future, the transferee will abide by all existing commitments on the license..

Therefore, the staff concludes that this transfer of control 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.