

**SAFETY EVALUATION REPORT
TRANSFER OF CONTROL FOR BYPRODUCT MATERIALS
LICENSE NUMBER 47-30927-01, LEXINGTON COAL COMPANY, LLC**

DATE: December 07, 2020

DOCKET NO.: 030-36608

LICENSE NO.: 47-30927-01

LICENSEE: Lexington Coal Company, LLC
164 Main Street, Suite 401
Pikeville, KY 41564

TECHNICAL REVIEWER: Laurie A. Kauffman

SUMMARY AND CONCLUSIONS

Lexington Coal Company, LLC is authorized by U.S. Nuclear Regulatory Commission (NRC) License Number 47-30927-01 for the possession and use of byproduct material for purposes of use in fixed gauging devices for controlling industrial processes. The NRC staff reviewed a joint request for consent to a direct license transfer and change in the Radiation Safety Officer submitted by Lexington Coal Company, LLC that will result from a sale between Lexington Coal Company, LLC and Rum Creek Coal Sales, Inc. The transaction is an asset sale. Lexington Coal Company, LLC and Rum Creek Coal Sales, Inc. negotiated a transaction in which Lexington Coal Company, LLC will sell and Rum Creek Coal Sales, Inc. will purchase a loading facility in West Virginia known as the Feats/Holden Loadout facility and various assets relating thereto, including Lexington Coal Company, LLC (Material License No. 47-30927-01). Upon the closing of the transaction and NRC consent, the name of the licensee will change to Rum Creek Coal Sales, Inc. The direct change of control is described in Agency Documents Access and Management System (ADAMS) accession number ML20189A035.

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," dated June 2016. The NRC staff finds that the information submitted by Lexington Coal Company, LLC and Rum Creek Coal Sales, Inc. sufficiently describes and documents the transaction and commitments made by Lexington Coal Company, LLC and Rum Creek Coal Sales, Inc.

The review was also performed in accordance with NUREG-1556, Volume 4, Revision 1, "Consolidated Guidance About Materials Licenses – Program Specific Guidance About Fixed Gauge Licenses." The staff determined that Rum Creek Coal Sales, Inc. possessed two State of Kentucky licenses (Nos. 195-371-1 and PA-1579) and three NRC licenses (47-35355-01; 47-35156-01; and 47-23091-02) for a fixed gauge program; these licenses were 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 NRC License No. 47-23091-02. The NRC staff finds that the information submitted by Lexington Coal Company, LLC and Rum Creek Coal Sales, Inc. sufficiently describes and documents, the transaction, and commitments made by Lexington Coal Company, LLC and Rum Creek Coal Sales, Inc.

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 of control and change in Radiation Safety Officer is in accordance with the Act. The staff finds that, after the change of control, Rum Creek Coal Sales, Inc. 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 promote the security.

SAFETY AND SECURITY REVIEW

According to data obtained from the NRC's Licensing docket files, Lexington Coal Company, LLC has been authorized to use byproduct material for the purpose of use in fixed gauging devices for controlling industrial processes since March 8, 2018. The NRC conducted a field office inspection of Lexington Coal Company, LLC from July 6, 2020 to August 7, 2020, and no violations were identified during this inspection. The commitments made by Lexington Coal Company, LLC and Rum Creek Coal Sales, Inc. state that Rum Creek Coal Sales, Inc. (License No. 47-30927-01):

- A. will change the radiation safety officer listed in the NRC license to Thaddeus White;
- B. will not change the personnel 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 not change the organization's name listed in the NRC license; and
- F. will keep regulatory required surveillance records and decommissioning records.

Rum Creek Coal Sales, Inc. is an indirect, wholly-owned subsidiary of Contura Energy, Inc. Rum Creek Coal Sales, Inc. is a West Virginia corporation and Contura Energy, Inc. is a Delaware corporation. Contura Energy, Inc. and certain of its affiliates are known entities to the NRC. Affiliates of Contura Energy, Inc. that hold NRC specific licenses are Bandmill Coal LLC (NRC Materials License No. 47-35455-01), Marfork Coal Company, LLC (NRC Materials License No. 47-35156-01), and Spartan Mining Company, LLC (NRC Materials License No. 47-23091-02). Therefore, for security purposes, Rum Creek Coal Sales, Inc. 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," January 29, 2019 (Checklist). 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.

Rum Creek Coal Sales, Inc. 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

License No. 47-30927-01 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(b) to

determine if the change of control is in accordance with the provisions of the Act and, if so, give its consent in writing.

10 CFR 30.34(b)(1) 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. The central issue is whether the authority over the license has changed. Lexington Coal Company, LLC's request for consent describes a direct change of control resulting from a planned sale of Lexington Coal Company, LLC to Rum Creek Coal Sales, Inc. and, as such, the transfer requires NRC consent.

DESCRIPTION OF TRANSACTION

The transaction is described in ADAMS accession number ML20189A035. 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 Lexington Coal Company, LLC and Rum Creek Coal Sales, Inc. sufficiently describes and documents the commitments made by Lexington Coal Company, LLC and Rum Creek Coal Sales, Inc. and is consistent with the guidance in NUREG-1556, Volume 15, Revision 1.

ENVIRONMENTAL REVIEW

An environmental assessment for this action is not required because this approval of the described change of control and the associated administrative license amendment are categorically excluded under 10 CFR 51.22(c)(21).

CONCLUSION

The staff has reviewed the request for change of control of byproduct materials License No. 47-30927-01 and, pursuant to 10 CFR 30.34(b), consents to the direct change of control.

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. The also demonstrates that Rum Creek Coal Sales, Inc. 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 of 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.