



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
2100 RENAISSANCE BOULEVARD, SUITE 100
KING OF PRUSSIA, PENNSYLVANIA 19406-2713

April 26, 2013

Docket No. 03033571
EA-13-073

License No. 47-25301-01

Robert Hill
Safety Manager
Catenary Coal Company
Samples Mine
5914 Cabin Creek Road
Eskdale, WV 25075-9656

SUBJECT: NRC INSPECTION REPORT NO. 03033571/2013001, CATENARY COAL COMPANY, SAMPLES MINE, ESKDALE, WEST VIRGINIA; NOTICE OF VIOLATION; AND EXERCISE OF ENFORCEMENT DISCRETION

Dear Mr. Hill:

On March 19, 2013, Randolph Ragland of this office conducted a safety inspection at the above address of activities authorized by the above listed NRC license. The inspection continued in-office until April 15, 2013. The inspection was an examination of your licensed activities as they relate to radiation safety and to compliance with the Commission's regulations and the license conditions. The inspection consisted of observations by the inspector, interviews with personnel, and a selective examination of representative records. The findings of the inspection were discussed with you by telephone at the conclusion of the inspection on April 15, 2013.

Based on the results of this inspection and in accordance with the NRC Enforcement Policy, the NRC has determined that one Severity Level IV violation of NRC requirements occurred. The violation involved the failure to use a minimum of two independent physical controls that form tangible barriers to prevent unauthorized removal, whenever portable gauges were not under the control and constant surveillance of the licensee, as required by 10 CFR 30.34(i).

The violation is cited in the enclosed Notice of Violation (Notice), because the violation was identified by the NRC.

During our inspection exit meeting on April 15, 2013, you indicated that this violation occurred because individuals who were not familiar with portable gauge security requirements left the outer door to the gauge storage area open, leaving only the locked inner door to secure the gauge from unauthorized removal. You also stated that to correct the violation and prevent future occurrences, an additional lock was installed on the gauge storage area door. Further, you stated that Catenary Coal is committed to radiation safety and to compliance with NRC regulations and licensed conditions.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence is already adequately addressed in our records. Therefore, you are not required to respond to this letter unless the

description of your corrective actions in this letter does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

As noted above, a violation of 10 CFR 30.34(i) was identified during this inspection and is described in the enclosed Notice of Violation. In accordance with the Enforcement Policy, although such violations are normally categorized at Severity Level III and considered for escalated enforcement action, because (1) one physical control existed to prevent loss or theft of the portable gauge; (2) you retained possession of the gauge; (3) the violation was isolated; and (4) no indication of programmatic weakness was identified, the NRC is exercising enforcement discretion to categorize this violation as Severity Level IV.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC document system (ADAMS), accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Current NRC regulations and guidance are included on the NRC's website at www.nrc.gov; select **Nuclear Materials; Med, Ind, & Academic Uses**; then **Regulations, Guidance and Communications**. The current Enforcement Policy is included on the NRC's website at www.nrc.gov; select **About NRC, Organizations & Functions; Office of Enforcement; Enforcement documents**; then **Enforcement Policy (Under 'Related Information')**. You may also obtain these documents by contacting the Government Printing Office (GPO) toll-free at 1-866-512-1800. The GPO is open from 8:00 a.m. to 5:30 p.m. EST, Monday through Friday (except Federal holidays).

The NRC's Safety Culture Policy Statement became effective in June 2011. While a policy statement and not a regulation, it sets forth the agency's *expectations* for individuals and organizations to establish and maintain a positive safety culture. You can access the policy statement and supporting material that may benefit your organization on NRC's safety culture Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/safety-culture.html>. We strongly encourage you to review this material and adapt it to your particular needs in order to develop and maintain a positive safety culture as you engage in NRC-regulated activities.

R. Hill

3

Please contact Randolph Ragland at 610-337-5083 if you have any questions regarding this matter.

Sincerely,

/RA D. S. Collins for/

Raymond K. Lorson, Director
Division of Nuclear Materials Safety

Enclosure:
Notice of Violation

cc w/Enclosure:
Robert Hill, Safety Manager and Radiation Safety Officer
State of West Virginia

R. Hill

3

Please contact Randolph Ragland at 610-337-5083 if you have any questions regarding this matter.

Sincerely,

/RA D. S. Collins for/

Raymond K. Lorson, Director
Division of Nuclear Materials Safety

Enclosure:
Notice of Violation

cc w/Enclosure:
Robert Hill, Safety Manager and Radiation Safety Officer
State of West Virginia

Distribution w/Enclosure:

OEMail
NHasan, OE
LSreenivas, OE
MBurgess, FSME
RSun, FSME
DHolody, RI
MMcLaughlin, RI
CCrisden, RI

DOCUMENT NAME: G:\WordDocs\Current\Insp Letter\L47-25301-01.2013001.doc

ML13120A614

SUNSI Review Complete: RRagland

After declaring this document "An Official Agency Record" it will be released to the Public.

To receive a copy of this document, indicate in the box: "C" = Copy w/o attach/encl "E" = Copy w/ attach/encl "N" = No copy

OFFICE	DNMS/RI	N	DNMS/RI		DNMS/RI		DNMS/RI	
NAME	RRagland/rcr		BWelling/bdw		RLorson/rkl		DHolody/mm f/	
DATE	04/15/13		04/18/13		04/19/13		04/22/13	
OFFICE	DNMS/RI	N						
NAME	RLorson/dsc f/							
DATE	04/26/13							

OFFICIAL RECORD COPY

NOTICE OF VIOLATION

Catenary Coal Company
Eskdale, WV

Docket No. 03033571
License No. 47-25301-01
EA-13-073

During an NRC inspection conducted on March 19, 2013 – April 15, 2013, one violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 30.34(i), requires each portable gauge licensee to use a minimum of two independent physical controls that form tangible barriers to prevent unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

Contrary to the above, for periods of time in 2012 through March 19, 2013, (e.g., nights and periods when the Plant Foreman's trailer was not occupied but the trailer door was open), Catenary Coal Company did not use a minimum of two independent physical controls that form tangible barriers to prevent unauthorized removal, whenever a portable gauge was not under the control and constant surveillance of the licensee. Specifically, one Troxler Model 3430 portable gauge, containing approximately 9 millicuries of Cs-137 and 44 millicuries of Am-241, was secured inside the Plant Foreman's trailer with only one door lock to prevent unauthorized removal of the gauge.

This is a Severity Level IV violation (EGM-11-004).

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence and the date when full compliance was achieved is already adequately addressed on the docket. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

If you contest this enforcement action, you should also provide a copy of your response to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, any response which contests an enforcement action shall be submitted under oath or affirmation.

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS) accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html>. Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made publically available without redaction.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days of receipt.

Dated This 26th day of April 2013