

April 5, 2016

Mr. Jeff Lux  
Environmental Properties Management, LLC.  
1908 Willow Way Circle  
Edmond, OK 73013

SUBJECT: CLARIFICATION OF THE MEANING OF PERSONNEL REFERRED TO IN  
LICENSE CONDITION 27.d OF LICENSE SNM-928 FOR CONTROL OF  
ACCESS TO THE CIMARRON FACILITY NEAR CRESCENT, OKLAHOMA

Dear Mr. Lux:

The U.S. Nuclear Regulatory Commission (NRC) staff has reviewed your letter dated February 24, 2016 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML16061A130), in which you requested clarification of the meaning of the term "personnel" as it is used in License Condition 27.d, which states:

Access gates to the Cimarron facility shall be locked and secured when no personnel are onsite and fences and locks will be maintained.

In your February 24<sup>th</sup> letter, you stated that it is your understanding that "personnel" in License Condition 27.d refers to employees of the licensee, Cimarron Environmental Response Trust, Environmental Properties Management LLC. In December 2015, you requested the NRC's approval to grant a right of way to TOMPC, LLC., a natural gas and pipeline company, across the licensed site. The NRC approved this right of way. Because you are the sole employee of the licensee, you understand License Condition 27.d to mean that you must be on the site when TOMPC, LLC. enters the site pursuant to its right of way. You stated that earlier this year, when TOMPC, LLC. was constructing the pipeline, you had to be on site while the pipeline company performed this work. Therefore, you stated that to interpret the term "personnel" in License Condition 27.d to strictly mean employees of the licensee places hardship on you.

In your letter, you referred to License Amendment 20, which the NRC issued by letter dated June 12, 2009 (ML083310046). This amendment revised License Condition 27.e.3 regarding the As Low As Reasonably Achievable (ALARA) Committee. The NRC's Safety Evaluation Report (SER) prepared for License Amendment 20 recognized that, at that time, the licensee had no employees (ML083310250). However, to ensure that the licensee or the licensee's parent company retained responsibility for the ALARA Committee, the NRC staff revised License Condition 27.e.3 by inserting the following sentence:

The designees for decommissioning of the site and the Radiation Safety Officer or equivalent, shall be retained by the licensee or the licensee's parent company.

As explained in the License Amendment 20 approval letter and SER, this provision ensures that the licensee is responsible for ensuring that individuals retained to work on the site have the training, qualifications, and experience needed to perform their work in accordance with regulatory and license requirements. You requested that the term "personnel" in License

Condition 27.d be similarly interpreted to include individuals retained by the licensee to perform work on licensed activities.

As we discussed in our telephone conversation on March 10, 2016, License Condition 27.d does not require you, as the sole employee of the licensee, to be onsite when TOMPC, LLC. enters the site pursuant to its right of way. In accordance with the reasoning underlying License Amendment 20, the NRC staff interprets the term "personnel" in License Condition 27.d to refer to employees of the licensee and those individuals "retained" by the licensee to perform work on licensed activities.

Personnel "retained" by the licensee are contractors or subcontractors and their employees who have training, qualifications, and experience commensurate with their work on licensed activities. Two key features of these personnel are that: (1) a legal relationship exists between these retained individuals and the licensee (usually contractors or subcontractors) that gives the licensee oversight and authority over their work on licensed activities; and (2) these retained individuals have training, qualifications, and experience commensurate with their work on licensed activities. It should be noted that TOMPC, LLC. personnel would not qualify as "personnel" under License Condition 27.d, because they are not under contract with the licensee with respect to licensed activities and they are not engaged in licensed activities for which they are trained and qualified.

In accordance with 10 CFR 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's ADAMS. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

If you have any questions concerning this letter, please contact me at (301) 415-6664 or via email at [Kenneth.Kalman@nrc.gov](mailto:Kenneth.Kalman@nrc.gov).

Sincerely,

/RA/

Kenneth Kalman, Project Manager  
Materials Decommissioning Branch  
Division of Decommissioning, Uranium Recovery,  
and Waste Programs  
Office of Nuclear Material Safety  
and Safeguards

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Sincerely,

/RA/

Kenneth Kalman, Project Manager  
Materials Decommissioning Branch  
Division of Decommissioning, Uranium Recovery,  
and Waste Programs  
Office of Nuclear Material Safety  
and Safeguards

**ADAMS Accession No.:**

**ML16085A042**

**\*NLO**

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NAME	K. Kalman	C. Holston	E. Houseman*	M. Norato	K. Kalman
DATE	3/25/16	3/24/16	3/24/16	4/4/16	4/5/16

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