

SAFETY EVALUATION REPORT
PROPOSED TRANSFER OF CONTROL FOR BYPRODUCT NRC MATERIALS LICENSE
NUMBERS 47-23053-01 and 47-23023-01, PATRIOT COAL CORPORATION & WHOLLY-
OWNED SUBSIDIARIES.

DATE: April 25, 2016

DOCKET Nos.: 030-20218
030-20185

LICENSE Nos.: 47-23053-01
47-23023-01

CONTROL Nos.: 590399
590401

LICENSEE: Patriot Coal Corporation
63 Corporate Centre Drive
P.O Box 1001
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TECHNICAL REVIEWER: John Miller, Health Physicist, Region I

SUMMARY AND CONCLUSIONS

Patriot Coal Corporation, and its wholly-owned subsidiaries (Eastern Associated Coal, LLC, and Hobet Mining, LLC), were authorized by NRC Licenses 47-23053-01 and 47-23023-01 for the use of byproduct material in fixed gauging devices for density, level, and interface measurements and elemental analysis.

In a letter dated May 13, 2015 (ML15162A109), Patriot Coal Corporation notified the NRC, in accordance with 10 CFR 30.34(h)(1), that it had filed for bankruptcy along with several of its wholly-owned subsidiaries, some of whom were also NRC licensees. In response, the NRC sent a letter to Patriot Coal Corporation dated June 25, 2015 (ML15181A068) acknowledging their notification and reminding them of their obligations to comply with NRC requirements, including those relating to safety and security of the radioactive material and the requirement in the Atomic Energy Act of 1954, as amended, and NRC's regulations that they may not transfer control of licensed material without the NRC's prior written approval. In the June 25, 2015 letter, the NRC also informed them that they may not transfer control of their license or licensed material without the NRC's prior written approval. On October 15, 2015, the NRC filed in the Patriot Coal Corporation bankruptcy proceeding a notice of these obligations, "Notice of Prohibition Against Transfer of License or Disposal of Licensed Radioactive Material Without Prior Written Approval of NRC and Notice of Debtors' Obligations as General Licensee of the NRC."

Patriot Coal Corporation notified the NRC in a letter dated November 24, 2015 from Earl Moles, Environmental Manager, Patriot Coal Services, to NRC Region 1 (ML15337A432), that they had completed the Chapter 11 restructuring process and sold some of Patriot's operating assets to an affiliate of Virginia Conservation Legacy Fund (VCLF), including the licensed material. Patriot Coal and VCLF Land Trust Inc., the affiliate of VCLF, did not receive NRC approval prior to the transfer of control. In response, the NRC informed VCLF Land Trust Inc. that they must request approval for license transfers and VCLF Land Trust Inc.'s wholly-owned subsidiaries,

ERP Federal Mining Complex and ERP Environmental Fund, Inc., then requested post-hoc approval of the transfers.

By letters dated February 5, 2016 (ML16076A295, ML16076A296),¹ VCLF Land Trust Inc.'s wholly-owned subsidiaries, ERP Federal Mining Complex, LLC and ERP Environmental Fund, Inc., submitted a request for NRC consent to an indirect transfer of the licenses at a Chapter 11 auction, on October 28, 2015, whereby Patriot Coal Corporation sold some of its operating assets to VCLF and its affiliate company VCLF Land Trust, Inc., LLC. Several of Patriot Coal Corporation's subsidiaries with operations in West Virginia were NRC license holders and a complete list of these NRC licenses, including the names of the successor companies, which are wholly-owned subsidiaries of VCLF Land Trust Inc., are listed below.

Previous Company Name	NRC License No.	Successor Company Name
Eastern Associated Coal, LLC	47-23053-01	ERP Federal Mining Complex, LLC
Hobet Mining, LLC	47-23023-01	ERP Environmental Fund, Inc.

As a result of the Chapter 11 sale, the VCLF Land Trust Inc.'s wholly-owned subsidiaries, ERP Federal Mining Complex, and ERP Environmental Fund, Inc., requested post-hoc approval for amendments to the current licenses to change the names from the Patriot Coal Corporation subsidiaries to the names of the VCLF Land Trust Inc., subsidiaries as listed in the above table, upon approval of the indirect transfer of control. Additional details of the sale of assets are provided in the letter dated November 24, 2015, and letters dated February 5, 2016 (ML16076A295, ML16076A296) from Kenny Daniel, Senior Permitting Engineer, ERP Federal Mining Complex, LLC and ERP Environmental Fund, Inc., to John Miller, Health Physicist, NRC Region 1, and letters dated March 30, 2016 (ML16097A518, ML16098A107) from Kenny Daniel, Senior Manager of Permitting, ERP Federal Mining Complex, LLC and ERP Environmental Fund to John Miller, Health Physicist, NRC Region 1.

The notice was reviewed by NRC staff and is understood to be an indirect transfer of control of a 10 CFR Part 30 license using the guidance in NUREG-1556, Volume 15, "Consolidated Guidance about Materials Licenses Program-Specific Guidance about Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Material Licenses," dated November 2000. The NRC staff finds that the information submitted by Kenny Daniel sufficiently describes and documents the transaction and commitments made by Patriot Coal Corporation and the VCLF Land Trust Inc. wholly-owned subsidiaries.

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 notice and finds that the proposed transfer of control is partially in accordance with the Act. The licensee failed to request and receive approval of the notice prior to transfer of the licenses and the licensed material. However, the staff finds that, after the transfer of control, VCLF Land Trust Inc. and its wholly-owned subsidiaries, ERP Federal Mining Complex, and ERP Environmental Fund, Inc. will continue to operate with the same facilities, personnel, equipment, and procedures as Patriot Coal and its subsidiaries. ERP Federal Mining Complex, and ERP Environmental Fund, Inc. agreed to abide by the existing

¹ ML numbers are accession numbers used in the NRC's Agencywide Documents Access and Management System (ADAMS). Accession numbers can be used to access publicly available documents online at <http://adams.nrc.gov/wba/>.

licenses in letters dated February 5, 2016. Therefore, a VCLF Land Trust Inc. and its subsidiaries are qualified to use byproduct material for the purpose requested, and will continue to have the equipment, facilities, and procedures needed to protect public health and safety, and promote the security of licensed material.

SAFETY AND SECURITY REVIEW

According to data obtained from the NRC's Web Based Licensing (WBL) system and Region 1 paper records, License No. 47-23053 was issued on May 17, 1985, to Eastern Associated Coal Corporation. The NRC conducted a regional office inspection of Eastern Associated Coal, LLC on March 28, 2013, in Fairview, WV; no violations were identified. The current RSO for this license has been assigned since January 31, 2012.

License No. 47-23023-01 was issued in March 30, 1984, to Hobet Mining. The NRC conducted a main office inspection of Hobet Mining, LLC on December 9, 2013, in Madison, WV; no violations were identified. The current RSO for this license has been assigned since May 16, 2000.

Concerning NRC License Nos. 47-23053-01 and 47-23023-01, the commitments made by ERP Federal Mining Complex, and ERP Environmental Fund, Inc., as provided in the February 5, 2016, letters, states that none of the existing safety and security requirements in place to date will be substantially affected under the proposed transaction including;

- A. There will be no change in the Radiation Safety Officer listed in the NRC License No. 47-23053-01. However, a replacement Radiation Safety Officer (RSO) will be named for NRC License No 47-23023-01 and that individual being named has training and qualifications commensurate with this position.
- B. There will not be a change in the personnel involved in licensed activities;
- C. There will not be a change the locations, facilities, and equipment authorized in the NRC licenses;
- D. There will not be a change in the radiation safety program authorized in the NRC licenses; and,
- E. All required surveillance records and decommissioning records will be kept and maintained.

Since VCLF and its affiliate company, VCLF Land trust, Inc., did not have direct or indirect control of a NRC or Agreement State material license before October 28, 2015, a pre-licensing visit was conducted at the ERP Federal Mining Complex and ERP Environmental Fund, Inc., Facilities on April 13, 2016. For security purposes, ERP Federal Mining Complex and ERP Environmental Fund, Inc., was reviewed following 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 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.

Pursuant to 10 CFR 30.35, "Financial Assurance and Recordkeeping for Decommissioning," a decommissioning funding plan or financial assurances are not required for the licenses due to the types and quantities of licensed materials authorized for use and possession in NRC License Numbers 47-23053-01 and 47-23023-01.

REGULATORY FRAMEWORK

Patriot Coal Corporation (Patriot), and its wholly-owned subsidiaries, Eastern Associated Coal, LLC, and Hobet Mining, LLC NRC Licenses 47-23053-01 and 47-23023-01, were 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 to determine if the transfer 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."

As previously indicated, the staff evaluation is based on guidance in NUREG-1556, Volume 15. The central issue is whether the authority over the license has changed. VCLF Land Trust Inc. and its wholly-owned subsidiaries, ERP Federal Mining Complex, and ERP Environmental Fund, Inc. request for consent describes an indirect transfer of control resulting from the completion of the Chapter 11 restructuring process, on October 28, 2015, whereby Patriot Coal sold some of its operating assets to VCLF and its affiliate company VCLF Land Trust Inc. and, as such, the transfer requires NRC consent.

DESCRIPTION OF TRANSACTION

The transaction is described in detail in documents available on the NRC Agency wide Document and Access Management System (ADAMS) through accession numbers ML15337A432, ML16076A295, ML16076A296, ML16097A518, and ML16098A107. After completion of the Chapter 11 sale process, on October 28, 2015, whereby Patriot Coal Corporation sold some of its operating assets to VCLF and its affiliate company VCLF Land Trust Inc., VCLF and its affiliate company VCLF Land Trust Inc. kept the material at each of the existing two facilities and retained the same personnel but renamed the two wholly-owned subsidiaries. The previous and current names are listed in the table above. 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.

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

The NRC staff finds that the information submitted in documents by Patriot Coal Corporation and VCLF Land Trust Inc.'s wholly-owned subsidiaries, ERP Federal Mining Complex, and ERP Environmental Fund, Inc. (ADAMS accession numbers ML15337A432, ML16076A295, and ML16076A296) sufficiently describe and document the commitments made by ERP Federal Mining Complex, LLC and ERP Environmental Fund, Inc. and is consistent with the guidance in NUREG-1556, Volume 15.

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

Patriot Coal Corporation notified the NRC in a letter dated November 24, 2015 that they had completed the Chapter 11 restructuring process and sold some of Patriot's operating assets to an affiliate of Virginia Conservation Legacy Fund (VCLF), including the licensed material. Patriot Coal and VCLF Land Trust Inc., the affiliate of VCLF, did not receive NRC approval prior to the transfer of control, including the licensed material. In response, the NRC informed VCLF Land Trust Inc. that they must request approval for license transfers. VCLF Land Trust Inc.'s wholly-owned subsidiaries, ERP Federal Mining Complex, LLC and ERP Environmental Fund, Inc., requested post-hoc approval for amendments to the current licenses to change the names from the Patriot Coal Corporation subsidiaries to their names.

The staff has reviewed the request for consent submitted by ERP Federal Mining Complex, LLC and ERP Environmental Fund, Inc. with regard to an indirect transfer of control of NRC License Nos. 47-23053-01 and 47-23023-01 and approves the application pursuant to 10 CFR 30.34(b). Despite the transfer of the licenses and licensed material from Patriot Coal to VCLF and affiliate VCLF Land Trust without prior NRC approval, the staff has determined that licensed activities continued with no changes in the personnel, equipment, facilities, or procedures during this period of transition.

The submitted information sufficiently describes the transaction; documents ERP Federal Mining Complex, LLC and ERP Environmental Fund, Inc.'s understanding of the license and 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.

Therefore, the staff concludes that the proposed transfer 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.