

**SAFETY EVALUATION REPORT
TRANSFER OF CONTROL FOR BYPRODUCT NRC MATERIALS LICENSE NUMBER
47-25168-01, CONSOL OF KENTUCKY, INC.**

DATE: November 15, 2016

DOCKET No.: 030-32497

LICENSE No.: 47-25168-01

CONTROL No.: 591720

LICENSEE: CONSOL of Kentucky, Inc.
P.O. Box 76
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Naugatuck, West Virginia 25685

TECHNICAL REVIEWER: Scott Wilson, Health Physicist, Region I

SUMMARY AND CONCLUSIONS

CONSOL of Kentucky, Inc., was authorized by NRC License No. 47-25168-01 for the use of byproduct material in fixed gauging devices for controlling industrial processes and elemental analysis of bulk material.

By letters dated July 29, 2016, and September 23, 2016, Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML16235A339 and ML16288A193, respectively, CONSOL of Kentucky, Inc. (CONSOL) requested the NRC's consent to an indirect transfer of control of the above license. Currently, CONSOL is the sole owner. After the transaction, Southeastern Land, LLC, P.O. Box 190, Route 292, Lovely, KY 41231, will be the sole owner.

The request for consent 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 - 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 CONSOL sufficiently describes and documents the transaction and commitments made by Southeastern Land, LLC.

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 transfer of control is in accordance with the Act. The staff finds that, after the transfer of control, Southeastern Land, LLC 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 common defense and security.

SAFETY AND SECURITY REVIEW

According to the NRC's Web Based Licensing System (WBL), CONSOL has been an NRC licensee since March 3, 2009. The NRC conducted a safety and security inspection at CONSOL's authorized locations of use on April 10, 2013, and no violations of NRC requirements or license conditions were identified during the inspection. The commitments made by Southeastern Land, LLC, state that under the transaction there are no plans to change:

- A. the radiation safety officer listed in the NRC license;
- B. the personnel involved in licensed activities;
- C. the locations, facilities, and equipment authorized in the NRC license;
- D. the radiation safety program authorized in the NRC license;
- E. the maintenance of required surveillance records and decommissioning records.

By letter dated October 20, 2016, on behalf of the principals of Southeastern Land, LLC, the Attorney-in-Fact, Larry Adams, P.E., provided that the principal owners of Southeastern Land, LLC, James Booth and Ted McGinnis, also maintain ownership positions in several affiliated companies under the trade name Booth Energy. The affiliated companies also conduct coal mining and processing activities and are authorized for the use and possession of devices containing radioactive materials of the same type and for the same purposes as those possessed by CONSOL, namely fixed gauging devices for controlling industrial processes and for the elemental analysis of bulk material (coal). One of the affiliated companies is Argus Energy WV, LLC; NRC License No. 47-25543-01. A review of NRC databases and records found that the Argus Energy license was inspected on December 10, 2013, resulting in one Severity Level IV violation of NRC requirements for failing to request a license amendment to update the name of the radiation safety officer. The licensee took immediate corrective actions by requesting an amendment to the license. The review found the license was current and that no other significant violations were noted during recent inspections of the licensed facilities. Therefore, for security purposes, the principal owners of Southeastern Land, LLC, are considered known entities 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 aspect of the review 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, which Southeastern Land, LLC's qualification as a known entity provides.

Southeastern Land, LLC, is not required to have decommissioning financial assurance based on the types and amount of material authorized in NRC Materials License No. 47-25168-01.

REGULATORY FRAMEWORK

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.

CONSOL's NRC Materials License No. 47-25168-01 was issued under 10 CFR Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material."

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 when determining whether a license is transferred is whether the authority over the license has changed. CONSOL's request for consent describes an indirect transfer of control of the NRC license held by CONSOL, resulting from an asset sale between CONSOL and Southeastern Land, LLC. Following the completion of the asset sale, Southeastern Land, LLC, will become the sole owner. As such, the transfer requires NRC consent.

DESCRIPTION OF TRANSACTION

The transaction is described in the transfer application letter dated July 29, 2016, ADAMS Accession No. ML16235A339, as an asset purchase. After completion of the asset purchase, Southeastern Land, LLC, will be responsible for the control of all licensed activities under NRC Materials License No. 47-25168-01. As discussed 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 by CONSOL sufficiently describes and documents the commitments made by Southeastern Land, LLC, 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

The NRC staff has reviewed the request for consent submitted by CONSOL with regard to an indirect transfer of control of NRC Materials License No. 47-25168-01, pursuant to 10 CFR 30.34(b), and consents to the indirect transfer of control.

The submitted information sufficiently describes the transaction; documents the understanding of the licenses 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 submitted information also demonstrates that the licensee and its parent companies will abide by all existing commitments in the license, consistent with the guidance in NUREG-1556, Volume 15.

Therefore, the staff concludes that the 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.