



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

March 26, 2018

EA-18-018

Jim Higgins, Chief Engineer
CM Energy Operations, LP
200 George Street, Suite 4
Beckley, WV 25801

**SUBJECT: CM ENERGY OPERATIONS, LP, COAL PROCESSING FACILITY, COAL
MOUNTAIN, WEST VIRGINIA, EXERCISE OF ENFORCEMENT
DISCRETION**

Dear Mr. Higgins:

The purpose of this letter is to inform you of our determination regarding CM Energy Operations, LP's (CM Energy) recent possession of radioactive materials at your Coal Processing Facility in Coal Mountain, West Virginia, without an NRC license. Specifically, the Thermo Gamma Metrics Cross-Belt Elemental Analyzer (coal analyzer) and the Thermo Measure Tech Model 5201 (fixed gauge) devices that were installed at the facility when the property was transferred to CM Energy through a purchase.

The NRC authorizes the possession and use of the type and form of byproduct material installed in the coal analyzer and the fixed gauges (sealed sources) and the two types of devices have separate licensing requirements under NRC regulations. Possession of the coal analyzer required a specific license in accordance with the requirements in 10 CFR 30.3 "Activities requiring license," and the fixed gauges required registration with the NRC and licensing in accordance with 10 CFR 31.5. CM Energy took possession of the devices without prior NRC authorization. We note that after being made aware of the requirements, CM Energy transferred the sealed sources that were installed in the Thermo Gamma Metrics Cross-Belt Elemental Analyzer (coal analyzer) to a licensed entity, and that you registered the sealed sources in the Thermo Measure Tech Model 5201 fixed gauges with the NRC in accordance with the general license requirements in 10 CFR 31.5.

On or about January 25, 2017, our office became aware that Black Bear Processing, Inc. (NRC License Number 47-31252-01) had transferred its coal processing facility in Coal Mountain, West Virginia, including its licensed material (fixed gauges and coal analyzer) to National Resources, Inc. of Daniels, WV. On February 13, 2017, our office contacted you and learned that the aforementioned property, with the radioactive materials on the site, were transferred to CM Energy. In accordance with 10 CFR 30.3, an NRC license was required to receive, acquire, own, possess, or use the byproduct material (sealed sources of radioactive material) installed in the coal analyzer. We determined that from February 13, 2017, to October 11, 2017, the date when the coal analyzer sealed sources were transferred to an appropriately licensed entity, CM Energy was in violation of the licensing requirements of 10 CFR 30.3.

Based on the above information, the NRC has determined that a violation of NRC requirements occurred. The violation involved the possession of byproduct material without a specific NRC license issued in accordance with the regulations in 10 CFR Part 30.

This violation would normally be categorized in accordance with the NRC Enforcement Policy at Severity Level III; however, after consultation with the Director of the NRC's Office of Enforcement and the Regional Administrator of this office I have been authorized to exercise enforcement discretion in accordance with NRC Enforcement Policy Section 3.5, "Violations Involving Special Circumstances," and not issue a violation. The NRC's decision is based on the following considerations: 1) this was the first occurrence CM Energy was involved in; 2) the failure did not result in an actual safety, health or security consequence; 3) the failure was not willful; 4) CM Energy, once aware of the requirements, took appropriate action; and 5) CM Energy kept the coal analyzer in secure storage from February 13, 2017, until the sources were transferred on October 12, 2017.

In a telephone call on March 8, 2018, Scott Wilson of our office informed you and Terry L. Keen of your organization of this conclusion and that a letter documenting the conclusion would be issued. No further action or response is necessary on your part. In the future, should CM Energy Operations, LP, want authorization to possess byproduct material that is not authorized by the provisions in 10 CFR Part 30, CM Energy must submit a license application to the NRC, and receive authorization prior to receiving byproduct material.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter 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 Web Site 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 Web Site 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).

If you have any questions regarding this matter, please contact Scott Wilson of my staff at 610-337-5136 or via electronic mail at scott.wilson@nrc.gov.

Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Jm Trapp". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

James M. Trapp, Director
Division of Nuclear Materials Safety
Region I

cc: State of West Virginia

J. Higgins

3

Thank you for your cooperation.

Sincerely,

/RA/

James M. Trapp, Director
Division of Nuclear Materials Safety
Region I

cc: State of West Virginia

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*see previous concurrence

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health or security consequence; 3) the failure was not willful; 4) CM Energy, once aware of the requirements, took appropriate action; and 5) CM Energy kept the coal analyzer in secure storage from February 13, 2017, until the sources were transferred on October 12, 2017.

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Thank you for your cooperation.

Sincerely,

James m. Trapp, Director
Division of Nuclear Materials Safety
Region I

cc: State of West Virginia

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*see previous concurrence

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Haverkamp, Trisha

From: McLaughlin, Marjorie
Sent: Monday, March 19, 2018 11:14 AM
To: Haverkamp, Trisha
Subject: FW: CM Energy

Hi, Trish,

The concurrence from OE (L Sreenivas) and NMSS (M Burgess) are provided in this email chain. I also concur for the regional enforcement staff.

Thank you!
Marjey

From: Sreenivas, Leelavathi
Sent: Monday, March 19, 2018 9:19 AM
To: McLaughlin, Marjorie <Marjorie.McLaughlin@nrc.gov>
Cc: Burgess, Michele <Michele.Burgess@nrc.gov>
Subject: FW: CM Energy

Good morning Marjey,

HQ is good with the letter and have one comment/edit. The docket number and license number at the end of the page 2 should be removed. Looks like they belong to Black Bear?? Please check.
Thanks.
Leela

From: Burgess, Michele
Sent: Monday, March 19, 2018 7:41 AM
To: Sreenivas, Leelavathi <Leelavathi.Sreenivas@nrc.gov>
Subject: RE: CM Energy

Thanks for the opportunity to review. I have no comments. I concur.

Michele

From: Sreenivas, Leelavathi
Sent: Friday, March 16, 2018 5:22 PM
To: Burgess, Michele <Michele.Burgess@nrc.gov>
Subject: FW: CM Energy

Hi Michele, for you review and concurrence.
Thanks.
Leela

From: McLaughlin, Marjorie
Sent: Friday, March 16, 2018 11:32 AM

To: Sreenivas, Leelavathi <Leelavathi.Sreenivas@nrc.gov>

Subject: CM Energy

Hi, Leela,

The letter to the company (CM Energy) with the enforcement discretion for possessing RAM without a license is attached for HQ review/concurrence

Please let me know if you have any comments or questions and let me know when we have concurrence from you and Michele.

Thank you so much!

Marjey

Marjorie McLaughlin

Senior Enforcement Specialist

US Nuclear Regulatory Commission, Region I

Phone: 610-337-5240

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Thank you for your cooperation.

Sincerely,

James m. Trapp, Director
Division of Nuclear Materials Safety
Region I

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License No. 47-31252-01

cc: State of West Virginia

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