

**SAFETY EVALUATION REPORT
TRANSFER OF CONTROL FOR NRC BYPRODUCT MATERIALS LICENSE NUMBER –
47-25363-02, ELK RUN COAL COMPANY, LLC.**

DATE: February 11, 2019

DOCKET NO.: 03038751

LICENSE NO.: 47-25363-02

LICENSEE: Elk Run Coal Company, LLC
P.O. Box 457
Whitesville, WV 25209

TECHNICAL REVIEWER: James Cassata

SUMMARY AND CONCLUSIONS

Elk Run Coal Company, LLC, holds a byproduct material license issued by the U.S. Nuclear Regulatory Commission (NRC). Under NRC Materials License 47-25363-02, Elk Run Coal Company, LLC is authorized to possess and use byproduct material for the purpose of using fixed gauging devices for controlling industrial processes at its facilities in Sylvester, West Virginia.

By the letter dated October 15, 2018, Agencywide Documents Access and Management System (ADAMS) Accession Number ML18292A768, Alpha Natural Resources Holdings Inc. (Holdings), requested written consent by the U.S. Nuclear Regulatory Commission (NRC) for a proposed indirect transfer of control of the license. Contura Energy, Inc. (Contura) and Holdings entered into an Agreement and Plan of Merger dated April 29, 2018, and Amended and Restated Merger Agreement dated September 27, 2018 (collectively, the "Merger Agreement"), whereby the parties have agreed that Contura will become the ultimate parent company of Holdings and its wholly-owned subsidiaries, including Elk Run Coal Company, LLC. Your email dated January 08, 2019, stated that the merger was completed on November 9, 2018. Thus, Holdings did not comply with NRC regulations or the Atomic Energy Act of 1954, as amended (AEA), as they did not receive the NRC's prior written approval for this transfer of control as required by 10 CFR 30.34(b) and Section 184 of the AEA.

The request for consent was reviewed by NRC staff. The NRC staff applied the guidance in NUREG-1556, Volume 15, Revision 1, "Consolidated Guidance About Materials Licenses - Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses," dated June 2016, and determined that the merger of Holdings to Contura on November 9, 2018, was an indirect transfer of control. The NRC staff finds that the information submitted by Holdings in the letter received October 15, 2018, sufficiently describes and documents the transaction and commitments made by Elk Run Coal Company, LLC, and Contura.

Approval of the license transfer does not require a license amendment as there was no name change to the current license.

As required by 10 CFR 30.34(b) and Section 184 of the Act, the NRC staff has reviewed the application and finds that, other than a failure to obtain the NRC's prior written approval of the

indirect transfer of control, the indirect transfer of control is in accordance with the Act. The staff finds that Elk Run Coal Company, LLC, is 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 data obtained from the NRC's Web Based Licensing (WBL), Elk Run Coal Company, LLC, has been an NRC licensee since September 3, 2014. The NRC conducted a main office inspection of Elk Run Coal Company, LLC, on June 10, 2015, for NRC Materials License No. 47-25363-02 and no violations were identified during the inspection.

The commitments made by Elk Run Coal Company, LLC, and Contura states that under the transaction they did not change:

- A. the radiation safety officer listed on 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; or
- E. the maintenance of required surveillance records and decommissioning records.

A site visit was not required because Elk Run Coal Company, LLC, and Contura are considered known entities. This review followed the guidance provided by the NRC's Nuclear Material Safety and Safeguards "Checklist to Provide a Basis for Confidence that Radioactive Materials Will be Used as Specified on the Application," January 29, 2019, Revision [ML18354A847]. The purpose of this aspect of the review is for the NRC to obtain reasonable assurance from new license applicants or NRC license transferees that the licensed material will be used for its intended purpose and not for malevolent use. Based on the inspection and the guidance, NRC has confirmed that there is reasonable assurance that Elk Run Coal Company, LLC, and Contura, based upon the commitments in the transfer application, will use the licensed material for its intended purpose and not for malevolent use.

Elk Run Coal Company, LLC, is not required to have decommissioning financial assurance based on the types and amount of material authorized in NRC Materials License No. 47-25363-02.

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.

Elk Run Coal Company, LLC, NRC Materials License No. 47-25363-02, was issued under 10 CFR Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material."

10 CFR 30.34(b)(1) 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."

10 CFR 30.34(c) states, in part: "Each person licensed by the Commission pursuant to the regulations in this part and parts 31 through 36 and 39 shall confine his possession and use of the byproduct material to the locations and purposes authorized in the license."

As previously indicated, the NRC staff's evaluation associated with the transfer of control is based on guidance in NUREG-1556, Volume 15, Revision 1. The central issue when determining whether a license is transferred is whether the authority over the license has changed. Holdings' request for consent describes an indirect transfer of control of the NRC license held by Elk Run Coal Company, LLC, resulting from the ownership change from Holdings to Contura. Following the merger, Elk Run Coal Company, LLC, continues to perform licensed activities but was indirectly transferred to Contura. As such, the transfer requires the NRC's consent.

DESCRIPTION OF TRANSACTION

Contura and Holdings entered into an Agreement and Plan of Merger dated April 29, 2018, and Amended and Restated Merger Agreement dated September 27, 2018 (collectively, the "Merger Agreement"), whereby the parties have agreed that Contura will become the ultimate parent company of Holdings and its indirect wholly-owned subsidiaries, including Elk Run Coal Company, LLC. As discussed above, while the transaction was executed without NRC consent, the NRC staff finds that the request provides an adequate description of the transaction, and is consistent with the guidance provided in section 5 of NUREG-1556, Volume 15, Revision 1.

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

The NRC staff finds that the information submitted by Holdings sufficiently describes and documents the commitments made by Elk Run Coal Company, LLC, and Contura and is consistent with the guidance in NUREG-1556, Volume 15, Revision 1.

ENVIRONMENTAL REVIEW

An environmental assessment for transfer of control is not required because this action is categorically excluded under 10 CFR 51.22(c)(21).

CONCLUSION

The NRC staff has reviewed the request for consent submitted by Holdings with regard to an indirect transfer of control of NRC Materials License No. 47-25363-02 pursuant to 10 CFR 30.34(b). The NRC consents to the indirect transfer of control.

The submitted information sufficiently describes the transaction, documents the transferee's commitments, demonstrates that personnel have the experience and training to properly

implement and maintain the license, and confirms that personnel will maintain the existing records. The submitted information also demonstrates that the licensee will abide by all existing commitments in the license, consistent with the guidance in NUREG-1556, Volume 15, Revision 1.

Therefore, the NRC staff concludes that the indirect transfer of control does 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.