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### 8. Remington Coal Company, Inc.

[Docket No. M-2002-081-C]

New River Engineering, Inc., 2971C East DuPont Avenue, Shrewsbury, West Virginia 25015, has filed a petition for the Remington Coal Company, Inc., 430 Harper Park Drive, Beckley, West Virginia 25801, to modify the application of 30 CFR 75.1700 (Oil and gas wells) to its Stockburg No. 1 Mine (I.D. No. 46-08634) located in Kanawha County, West Virginia. The petitioner proposes to plug and mine through oil and gas wells. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

### 9. Debra Lynn Coals, Inc.

[Docket No. M-2002-083-C]

Debra Lynn Coals, Inc., P.O. Box 297, Grays Knob, Kentucky 40829 has filed a petition to modify the application of 30 CFR 77.214 (Refuse piles; general) to its Liggett Preparation Plant (I.D. No. 15-12428) located in Harlan County, Kentucky. The petitioner requests a modification of the standards to allow placement of refuse material over abandoned mine portals and associated mine workings. The petitioner proposes to construct a refuse pile over abandoned underground mine works in the Harlan coal bed, and de-water rock drains from two existing mine adits within the abandoned mine works. The petitioner states that the massive sandstone unit immediately above the Harlan coal bed would prevent any adverse effects of mine subsidence on the refuse pile. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

### Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to [comments@msha.gov](mailto:comments@msha.gov), or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before November 12, 2002. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 4th day of October 2002.

**Marvin W. Nichols, Jr.,**

*Director, Office of Standards, Regulations, and Variances.*

[FR Doc. 02-25762 Filed 10-9-02; 8:45 am]

**BILLING CODE 4510-43-P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos: (Redacted), License Nos: (Redacted), EA-XX-XXX (Redacted)]**

### **In the Matter of All Power Reactor Licensees, Research and Test Reactor Licensees, and Special Nuclear Material Licensees Who Possess and Ship Spent Nuclear Fuel; Order Modifying License (Effective Immediately)**

The licensees identified in Attachment 1 to this Order have been issued a specific license by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing the possession of spent nuclear fuel and a general license authorizing the shipment of spent nuclear fuel [in a transportation package approved by the Commission] in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR parts 50, 70 and 71. This Order is being issued to all such licensees who ship spent nuclear fuel. Commission regulations for shipment of spent nuclear fuel at 10 CFR 73.37(a) require these licensees to maintain a physical protection system that meets the requirements contained in 10 CFR 73.37(b), (c), (d), and (e).

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility or regulated activity. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of

information provided by the intelligence community, the Commission has determined that certain compensatory measures are required to be implemented by licensees as prudent, interim measures, to address the current threat environment in a consistent manner. Therefore, the Commission is imposing requirements, as set forth in Attachment 2 of this Order, on all licensees identified in Attachment 1 of this Order.<sup>1</sup> These interim requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect pending notification from the Commission that a significant change in the threat environment has occurred, or the Commission determines that other changes are needed.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 2 to this Order in response to previously issued Safeguards and Threat Advisories or on their own. It is also recognized that some measures may not be possible or necessary for all shipments of spent nuclear fuel, or may need to be tailored to accommodate the licensees' specific circumstances to achieve the intended objectives and avoid any unforeseen effect on the safe transport of spent nuclear fuel.

Although the additional security measures implemented by licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of common defense and security, in light of the current threat environment, the Commission concludes that the security measures must be embodied in an Order consistent with the established regulatory framework. In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, all licenses identified in Attachment 1 to this Order shall be modified to include the requirements identified in Attachment 2 to this Order. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above which warrant the issuance of this Order, the public health, safety, and interest require that this Order be immediately effective.

<sup>1</sup> Attachments 1 and 2 contain SAFEGUARDS Information and will not be released to the public.

Accordingly, pursuant to Sections 53, 103, 104, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50, 70 and 71, *It is hereby ordered, effective immediately, that all licenses identified in Attachment 1 to this Order are modified as follows:*

A. All Licensees shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 2 to this Order except to the extent that a more stringent requirement is set forth in the Licensee's security plan. The Licensees shall immediately start implementation of the requirements in Attachment 2 to the Order and shall complete implementation by November 2, 2002, unless otherwise specified in Attachment 2, or before the licensee's next shipment, whichever is later.

B. 1. All Licensees shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if they are unable to comply with any of the requirements described in Attachment 2, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

2. Any Licensee that considers that implementation of any of the requirements described in Attachment 2 to this Order would adversely impact the safe transport of spent nuclear fuel must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 2 requirement in question, or a schedule for modifying the activity to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B1.

C. 1. All Licensees shall, within twenty (20) days of the date of this Order, submit to the Commission a schedule for achieving compliance with each requirement described in Attachment 2.

2. All Licensees shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 2.

D. Notwithstanding any provisions of the Commission's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained pending notification from the Commission that a significant change in the threat environment has occurred, or the Commission determines that other changes are needed.

Licensee responses to Conditions B1, B2, C1, and C2 above, shall be submitted to the NRC to the attention of the Director, Office of Nuclear Reactor Regulation or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, under either 10 CFR 50.4, 70.5. In addition, Licensee submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Reactor Regulation, or Director, Office of Nuclear Material Safety and Safeguards, as applicable, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555-0001. Copies also shall be sent to the Director, Office of Nuclear Reactor Regulation, or Director, Office of Nuclear Material Safety and Safeguards,

as applicable, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region I, II, III, or IV, as appropriate for the specific facility; and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov), and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).<sup>2</sup>

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this order.

<sup>2</sup> The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714 (d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714 (d), please see 67 FR 20884; April 29, 2002.

Dated at Rockville, Maryland, this 3rd day of October 2002.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

**Margaret Federline,**

*Deputy Director, Office of Nuclear Material Safety and Safeguards.*

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## NUCLEAR REGULATORY COMMISSION

[EA-02-124; Dockets Nos. 50-456; 50-457, 50-454; 50-455, 50-461, 50-10; 50-237; 50-249, 50-373; 50-374, 50-352; 50-353, 50-219, 50-171; 50-277; 50-278, 50-254; 50-265, 50-289, 50-295; 50-304; Licenses Nos. NPF-72; NPF-77, NPF-37; NPF-66, NPF-62, DPR-2; DPR-19; DPR-25, NPF-11; NPF-18, NPF-39; NPF-85, DPR-16, DPR-12; DPR-44; DPR-56, DPR-29; DPR-30, DPR-50, DPR-39; DPR-48]

**Exelon Generation Company, LLC and AmerGen Energy Company, LLC; Braidwood Station, Units 1 & 2, Byron Station, Units 1 & 2, Clinton Power Station, Dresden Nuclear Power Station, Units 1, 2 & 3, LaSalle County Station, Units 1 & 2, Limerick Generating Station, Units 1 & 2, Oyster Creek Nuclear Generating Station, Peach Bottom Atomic Power Station, Units 1, 2 & 3, Quad Cities Nuclear Power Station, Units 1 & 2, Three Mile Island Nuclear Station, Unit 1, Zion Nuclear Power Station, Units 1 & 2; Confirmatory Order Modifying Licenses (Effective Immediately)**

Exelon Generation Company, LLC (Exelon) and AmerGen Energy Company, LLC (AmerGen) (Licensees) are the holders of twenty-one NRC Facility Operating Licenses issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 50, which authorizes the operation of the specifically named facilities in accordance with the conditions specified in each license. Licenses No. NPF-72 and NPF-77 were issued on July 2, 1987, and May 20, 1988, to operate the Braidwood Station, Units 1 and 2. Licenses No. NPF-37 and NPF-66 were issued on February 14, 1985, and January 30, 1987, to operate Byron Station, Units 1 and 2. License No. NPF-62 was issued on April 17, 1987 to operate the Clinton Power Station. Licenses No. DPR-2 and DPR-25 were issued on September 28, 1959, and January 12, 1971, to operate Dresden Nuclear Power Station, Units 1 and 3 (Dresden Station Unit 1 is currently in decommissioning). License

No. DPR-19 was extended on February 20, 1991, for Dresden Nuclear Power Station, Unit 2. Licenses No. NPF-11 and NPF-18 were issued on April 17, 1982, and February 16, 1983, to operate LaSalle County Station, Units 1 and 2. Licenses No. NPF-39 and NPF-85 were issued on August 8, 1985, and August 25, 1989, to operate the Limerick Generating Station, Units 1 and 2. License No. DPR-16 was extended on July 2, 1991, for the Oyster Creek Nuclear Generating Station. License No. DPR-12 was issued on January 24, 1966, to operate Peach Bottom Atomic Power Station, Unit 1, which was shut down on October 31, 1974, and is in safe storage. Licenses No. DPR-44 and DPR-56 were issued on October 25, 1973, and July 2, 1974, to operate Peach Bottom Atomic Power Station, Units 2 & 3. Licenses No. DPR-29 and DPR-30 were issued on December 14, 1972, for the operation of both units at the Quad Cities Nuclear Power Station, Units 1 and 2. License No. DPR-50 was issued on April 19, 1974, to operate the Three Mile Island Nuclear Power Station, Unit 1. Licenses No. DPR-39 and DPR-48 were issued on October 19, 1973, and November 14, 1973, for operation of the Zion Nuclear Power Station, Units 1 and 2 (the Zion Station is currently in decommissioning).

On January 29, 2001, the NRC Office of Investigations (OI) initiated an investigation to determine if a former Exelon employee performing work at the Byron Station had been discriminated against for raising safety concerns. In its Report No. 3-2001-005, issued March 26, 2002, OI concluded that an Exelon corporate manager deliberately discriminated against the former employee on August 25, 2000, in violation of the NRC regulations prohibiting employment discrimination, 10 CFR 50.7, "Employee Protection," by not selecting the employee for a new position. On June 17, 2002, the NRC staff contacted Exelon management to schedule a predecisional enforcement conference. To expedite resolution of this matter, Exelon requested the opportunity to present a settlement proposal to the NRC prior to a predecisional enforcement conference. The NRC staff agreed to this request.

Representatives of Exelon met with the NRC staff on July 2, July 18, July 30, September 9 and September 11, 2002, to discuss the terms of the Exelon settlement proposal. In an August 5, 2002 letter, Exelon described the proposed settlement and on September 27, 2002, the Licensees committed to a number of corrective actions with respect to employee protection, agreed to have the corrective actions confirmed

by Order, and admitted that a violation of 10 CFR 50.7 had occurred. The corrective actions include, but are not limited to, counseling management personnel involved in the violation of 10 CFR 50.7, and training all vice-presidents and plant managers throughout the Licensees' organization (at every nuclear station and at corporate headquarters) on the provisions of the employee protection regulation. These individuals, in turn, will train their subordinate managers. The Licensees will also modify management training programs as appropriate regarding the provisions of 10 CFR 50.7.

On September 27, 2002, the Licensees consented to issuance of this Order with the commitments described in Section V below, waived any right to a hearing on this Order, and agreed to all terms of this Order, including that it shall be effective immediately.

I find that the Licensees' commitments as set forth in Section V, below, are acceptable and necessary, and conclude that since Exelon admitted the violation of 10 CFR 50.7 and since the Licensees committed to taking comprehensive corrective actions by implementing this Confirmatory Order, the NRC staff's concern regarding employee protection can be resolved through confirmation of the Licensees' commitments by this Order. I further find that the Licensees' approach to resolving this matter is salutary and efficient, and that this resolution is in the public interest. Accordingly, the NRC staff exercises its enforcement discretion pursuant to Section VII.B.6 of the NRC Enforcement Policy and will not issue Notices of Violation or a civil penalty in this case.

Accordingly, pursuant to sections 103, 104b, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, *it is hereby ordered, effective immediately, that license Nos. NPF-72, NPF-77, NPF-37, NPF-66, NPF-62, DPR-2, DPR-19, DPR-25, NPF-11, NPF-18, NPF-39, NPF-85, DPR-16, DPR-12, DPR-44, DPR-56, DPR-29, DPR-30, DPR-50, DPR-39, and DPR-48 are modified as follows:*

1. Exelon will counsel and coach personnel involved in the violation of 10 CFR 50.7, which occurred on August 25, 2000, to emphasize the importance of a safety conscious work environment and provisions of 10 CFR 50.7. The counseling will be conducted by a corporate Exelon executive not involved in the violation described herein and who shall be senior to those counseled.