

DEPARTMENT OF HEALTH SERVICES

714/744 P STREET
P.O. BOX 912732
SACRAMENTO, CA 94234-7320
(916) 322-3482

By Brenda,
Please return.



August 19, 1999

Mr. Paul H. Lohaus, Director
Office of State Programs
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Mr. Lohaus:

Attached is a letter to Molycorp, Inc. regarding the classification of certain radioactive wastes generated as a result of its rare earth mining and processing.

This letter is in response to inquiries as to whether this waste is regulated "under the Atomic Energy Act" or under state authority pursuant to state law. The reason for this splitting of hairs is that Molycorp wants to dispose of this waste at the Waste Control Specialists (WCS) facility in Texas. The Texas license/permit to WCS restricts disposal of "Atomic Energy Act" wastes at its site.

Please advise if the representations I have made in the letter are in any way incorrect.

As a courtesy to the responsible agency in Texas, I have also sent them a copy of my letter to Molycorp so that they are aware of what is happening.

Thank you for your review and response to this request.

Sincerely,

Edgar D. Bailey, C.H.P., Chief
Radiologic Health Branch

Enclosure

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DEPARTMENT OF HEALTH SERVICES

714/744 P STREET
P.O. BOX 942732
SACRAMENTO, CA 94234-7320

(916) 322-3482

August 19, 1999



Mr. William J. Almas
Manager of Environmental and Regulatory Affairs
Molycorp, Inc.
P. O. Box 124
Mountain Pass, California 92366

Dear Mr. Almas:

I am very sorry for the delay in responding to your request for a determination of whether or not the wastes coming from the processing of rare earth ores containing source material would be considered as regulated under the federal Atomic Energy Act (AEA) and the regulations promulgated under its authority by the U. S. Nuclear Regulatory Commission (NRC).

While the subject ores are source material, they were not and are not being processed primarily for their source material content; therefore, the wastes generated by this processing are not byproduct material as defined in Title 10 Code of Federal Regulations Part 40 section 4 (10CFR40.4) and are not regulated by the NRC as byproduct material.

Furthermore, the NRC has recently determined that wastes containing less than 0.05% by weight of source material fall under the exemption contained in 10 CFR 40.13(a), and that the NRC would not regulate the disposal of these wastes. While several states have objected to this determination by the NRC for the particular waste stream that prompted the determination, it is nevertheless the current policy of the NRC. Therefore, it appears that the wastes from your operations would not be subject to NRC regulation if you were located in a state where the NRC retains jurisdiction.

Please be advised that California is not limited in its jurisdiction over radioactive materials/wastes to the same extent the NRC is by federal law. Likewise, other states have more over-reaching radiation control laws than the NRC. Prior to shipping your wastes for disposal, it would be prudent to get written affirmation from the cognizant state radiation control agency in the state where the disposal is to occur that the disposal is acceptable at the selected disposal site.

Sincerely,

Edgar D. Bailey, C.H.P., Chief
Radiologic Health Branch