

From: Paul Lohaus
To: INTERNET:EBAILEY@DHS.CA.GOV
Date: 1/30/02 12:13PM
Subject: Response to 3/17/00 E-Mail

I'd:

I am responding to your March 17, 2000 e-mail (see below) regarding the plans of the U.S. Army Corps of Engineers (USACE) to leave in place up to 3021 pCi/g of total uranium after the cleanup of the Linde site in Tonawanda, New York. You indicated that the amount of total uranium greatly exceeds the 0.05% by weight source material that would exempt the material from regulation, and raised several questions.

At the present time, we are unable to provide you a definitive answer. Part of the reason for that is that the remedial action for the Linde Site is currently conducted by the USACE under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) as directed by Congress, and it is our understanding that Congress does not intend to have NRC's involvement during the course of the remedial action. Similarly, you raised a hypothetical question which assumes that the remedial action will in fact leave in place residual contamination levels up to 3021 pCi/g when the remedial action may result in levels well below that. Finally, this subject may be addressed through the Part 40 Jurisdiction Working Group and other current agency activities.

>>> "Bailey, Edgar (DHS-RHB)" <EBailey@dhs.ca.gov> 03/17 1:20 PM >>>

Below is a message that I recently received regarding the plans of the USACE to leave in place up to 3021 pCi/g of U(total) after the cleanup of a FUSRAP site for unrestricted release. This amount of U greatly exceeds the 0.05% by weight source material. Would NRC require the private owner of the site to be licensed to possess this source material in a non-Agreement State? Would you require an Agreement State to license it if it were in an Agreement State? Since leaving behind this level (concentration) of source material implies that the materials removed contained even higher levels of source material, would NRC license the off-site disposal of the source material?

Attached is 369 page Linde ROD by Corps of Engineers. They adopted, as the selected remedy, a cleanup level for free release at total uranium = 554 pCi/g top 15 cm and 3021 pCi/g below that! This was adopted without NYS-DEC, NYS-DOH, or EPA support.

CC: James Lieberman; Josephine Piccone; Kevin Hsueh