



California Department of Health Services

SANDRA SHEWRY  
Director

State of California—Health and Human Services Agency  
Department of Health Services

PHL  
JMP  
OSP



ARNOLD SCHWARZENEGGER  
Governor

October 6, 2004

Mr. Paul Lohaus  
U.S. Nuclear Regulatory Commission  
Office of State and Tribal Programs  
Washington, D.C. 20555

04 OCT 14 PM 1:58  
STP

SUBJECT: REGULATORY INTERPRETATION RELATED TO CAL 4-04-001

Dear Mr. Lohaus,

Thank you for your letter of July 16, 2004, in response to our June 3, 2004 letter concerning a Confirmatory Action Letter (CAL) issued by NRC to Sabia, Inc., a California specific licensee (License #6663-37). We appreciate NRC's response to our request for regulatory interpretations in this matter. While your letter resolves some of our concerns over this matter, we have some additional issues we would like to address.

While not belaboring the issue, I would like to comment that our understanding of the purpose of the May 20, 2004 telephone discussion, in which California Department of Health Services, Radiologic Health Branch (DHS/RHB) staff questioned the appropriateness of the cited regulatory basis in the proposed CAL, differs from that stated in your letter with respect to the timing of the CAL issuance. As you are aware, we were also concerned over other aspects of the May 20, 2004 telephone conversation. I believe that our concerns over this CAL issuance could have been assuaged had my staff had the opportunity to discuss this matter with appropriate NRC staff before the CAL was issued, rather than after its issuance as indicated in your letter. I hope that by working more closely in the future, we can improve the communications and understandings between our staffs and preclude similar issues from arising.

We are pleased to find that the NRC agrees that sealed sources and/or devices containing sealed sources can be legally transferred to specific licensees without issuance of a Sealed Source and Device (SS&D) registry sheet, at least in special situations, and that specific licensees can legally transfer radioactive materials to other specific licensees without obtaining a specific license authorizing such distribution. However, we ask that you review your stated position that a licensee cannot legally transfer a sealed source or device (or presumably other forms of radioactive material) to another licensee if the transferee's license does not authorize the intended use (license condition #9) of the transferred material. We agree that the NRC regulations (10 CFR

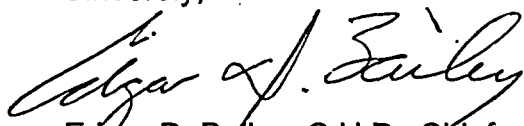
STP-006 Y complete  
RIDS: SP08

Mr. Paul Lohaus  
10/6/2004  
Page 2 of 2

30.41) clearly require the transferor to verify that the transferee's license authorizes the receipt of the type (license condition #6), form (license condition #7), and quantity (license condition #7) of the radioactive material to be transferred, but we are not aware of a regulatory requirement that the transferor must verify the use (license condition #9). If NRC continues to contend that transferors must verify "use" (license condition #9) before legally transferring radioactive materials, we would appreciate a more rigorous regulatory nexus for such requirement.

If you require additional information from DHS/RHB concerning this matter, please do not hesitate to contact me (916-440-7899 or 7897).

Sincerely,



Edgar D. Bailey, C.H.P., Chief  
Radiologic Health Branch  
California Department of Health Services

CC: Mr. Linda McLean  
U.S. Nuclear Regulatory Commission  
Region IV Office  
Texas Health Resources Tower  
611 Ryan, Suite 400  
Arlington, Texas 76011-4005

 ORIGINAL