

March 22, 2005

Mr. Edgar D. Bailey, CHP, Chief
Radiological Health Branch
Division of Food, Drug & Radiation Safety
California Department of Health Services
P. O. Box 997414
Sacramento, CA 95899-7414

Dear Mr. Bailey:

We are responding to your October 6, 2004, letter requesting clarification on the regulatory basis for the U.S. Nuclear Regulatory Commission (NRC) Confirmatory Action Letter (CAL) 4-04-001 issued to Sabia, Inc., on May 20, 2004. The NRC issued the CAL to Sabia, Inc., to address issues identified as under NRC's jurisdiction. Because Sabia, Inc., is also a California licensee, the NRC provided the information regarding the CAL to the State to allow the State to determine whether any additional State actions were necessary.

In your letter, you requested that we review the position we outlined in our initial response to you on July 16, 2004. In that response, we stated that before transferring radioactive material to another licensee, the transferor must verify that the transferee's license authorizes the receipt of the type, form and quantity (license conditions 6, 7 and 8) of the material to be transferred. In our response, we also stated that the transferor cannot legally transfer a sealed source or device (SS&D), or presumably other forms of radioactive material, to another licensee if the transferee's license does not authorize the intended use of the transferred material. In your letter, you stated that you are not aware of a regulatory requirement that the transferor must verify that the transferee's license authorizes the intended use of the transferred radioactive materials.

We agree that there are no provisions in 10 CFR requiring such verification before radioactive material is transferred to another licensee. Your assumption is correct that the transferor's obligation under 10 CFR 34.41(c) is to verify that the transferee is authorized to receive the specific form, type and quantity of radioactive material. A transferor may only transfer SS&Ds to a person whose terms of the license authorize receipt of the material as stated in that person's license [see, for example, 10 CFR Part 30.41(b)(5)]. If a transferee's license clearly identifies specific manufacturer(s) and model number(s), the transferor needs to verify that the material being transferred is exactly the material (i.e. manufacturer(s) and model number(s)) identified in the transferee's license.

If you have any questions, please contact me or Mr. Osiris Siurano of my staff at 301-415-2307 or e-mail: osp@nrc.gov.

Sincerely,

/RA/

Paul H. Lohaus, Director
Office of State and Tribal Programs

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Paul H. Lohaus, Director
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