From: Gary Comfort — NMSS/IMNS NMSS/DUWP
To: Anthony Huffert; Julie Olivier / NMSS/FCSS
Date: 1/8/03 4:16PM
Subject: Re: ACTION: New clearance case from FCSS

Tony,

I've done a quick review of this document. Although you may want to check with Jim Lieberman (OGC), NRC's official position (as I understand it), is that the exemption in 40.13(a) does not apply to licensees. It is instead more of an entrance into licensing but cannot be used as an exit. Normal modes of exit would be through the LTR, 40.51 transfer regulations, or since it deals with byproduct material, Appendix A of Part 40.

Despite what their lawyers say, presuming the ore entered the facility at greater than 0.05 percent it required a license. By running it initially through the mill for uranium content, it then becomes mill tailings. The mill tailings are then (although immediately processed), so that they are still processing licenseable source material. Additionally since it would appear to meet the definition of mill tailings, 40.13(a) is not applicable, because byproduct material is specifically excluded from the 40.13(a) exemption. The examples they site, I believe are conditions where the ore did not exceed 0.05 percent in the initial processing for materials other than source material, and so did not become licenseable until they were processed for uranium and therefore exceeded the 0.05 percent criteria.

You should note, however, under 40.51(c)(3), the licensee may then transfer source material to someone who is exempted from the regulations. This would include someone recieving concentrations under 0.05 percent per 10 CFR 40.13(a). Although it is not clear in 40.51, it is NRC's position that the licensee should have approval through license condition or other written approval to make such transfers (and we are in the process of codifying this to clear it up). These conditions/approvals may include conditions on labeling, etc. if believed to be necessary. However, if identified as mill tailings, they would potentially still not be viable for shipping under this exemption because of the exclusion for byproduct materials in 40.13(a).

Overall, it would be my opinion, based on current NRC policy, that since the material originates from licensable source material, it remains such and the process is licensable. The exception would be if the source ore was below 0.05 percent, one could argue that the vanadium stream never became licenseable nor originated from licenseable material. However, such an opinion has many other ramifications at this point.

Finally, while the material is on site, under Part 20, the licensee must account for doses from all materials (including those not under license) when meeting the 100 mrem levels, so t they are not offering to do anything they did not have to do already.

>>> Anthony Huffert 01/08/03 03:13PM >>>
Julie -

Yesterday John Lusher dropped off a copy of a document from International Uranium Corp, dated 4/28/01, that concerns the release of vanadium products contaminated with licensed uranium from the White Mesa Site. This document contains a legal and health physics analysis of the releases and was brought to my attention as a member of the Clearance Working Group for action.

As the FCSS representative for the "current practice" for controlling the release of solid materials, it would be very helpful if you would review this package and determine whether there is a need for the rest of the group to review/discuss this action. John will provide copies of the document to you and Elaine Brummet. Please let me know your availability to review this.

BK51

On a related topic, attached is the ADAMS information for the 12/27/02 "concrete guidance" memo. OSTP plans to issue it to the States in the next few days.

Tony

CC: Charlotte Abrams; Elaine Brummett; Frank Cardile; John Lusher; Scott Moore; Stephen Klementowicz