UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
612 EAST LAMAR BOULEVARD, SUITE 400
ARLINGTON, TEXAS 76011-4125

EA 10-061

May 3, 2010

DOWL, LLC
dba DOWL HKM
ATTN: Kurt R. Grabow
Radiation Safety Officer
P.O. Box 31318
Billings, Montana 59107-1318

SUBJECT: ENFORCEMENT DISCRETION

On August 8, 2005, the President of the United States signed the Energy Policy Act of 2005 (EPAct) into law. Section 651(e) of the EPAct expanded the definition of byproduct material to include naturally occurring and accelerator-produced radioactive materials (NARM), such as Radium-226 contained in sealed sources, which were not previously regulated by the U.S. Nuclear Regulatory Commission (NRC). Although the legislation made NRC's authority over these new materials effective immediately, the NRC did not have regulations in place that would specifically apply to this newly covered byproduct material. Therefore, the NRC issued a time-limited waiver on August 31, 2005 (70 FR 51581), for continued use and possession of NARM, allowing time for the NRC to develop regulations to implement the new requirements.

The NRC issued three Regulatory Information Summaries (RIS) informing licensees, manufacturer and distributors, and Agreement States of the recent issuance of regulations concerning the new byproduct materials. The RIS notified recipients that the NRC would be terminating waivers in phases, beginning November 30, 2007 for the State of Montana. The RIS explained that upon waiver termination, all persons in possession of material newly defined as byproduct material associated with the respective termination phase would be expected to be in compliance with NRC regulations. In addition, the RIS identified that such persons would be required to (1) submit license amendment requests for NARM within 6 months from the date the waiver is terminated if they hold an NRC specific byproduct materials license, or (2) submit a license application for NARM within 12 months from the date the waiver is terminated.

In accordance with the transition plan, the due date for submitting a license amendment request for NARM for users located in the State of Montana was May 30, 2008. Your company submitted an amendment request for NARM on February 2, 2010.

Notwithstanding the issuance of the Federal Register notice and the RIS, it is recognized that some entities may not have been aware of the new regulatory requirements. The NRC has reviewed your license amendment request and the information that you provided during the January 28, 2010 inspection. After considering the information developed during the review of your license amendment request, the NRC has determined to use enforcement discretion, in accordance with Enforcement Guidance Memorandum EGM-09-004, to not issue a violation for failure to submit a license amendment request to include NARM activities on or before May 30, 2008.

The NRC has concluded that the information provided to support this decision is already adequately addressed in the docket file. Therefore, you are not required to respond to this letter.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at http://www.nrc.gov/reading-rm/adams.html.

Thank you for your cooperation.

Sincerely,

/RA/

Jacqueline D. Cook, Acting Chief
Nuclear Materials Safety Branch B

Docket: 030-12845
License: 25-17492-01
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