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RECORD #29

TITLE: Application of 10 CFR 40.13(c)(1)(vi)

FICHE: 66550-232



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

DEC 14 1982

*John*  
0473/82  
**FILE COPY**  
*Interpretation*

MEMORANDUM FOR: James Joyner  
Nuclear Materials and Safeguards Branch  
Region I

FROM: Robert L. Fonner, Attorney  
Regulations Division  
Office of the Executive Legal Director

SUBJECT: APPLICATION OF 10 CFR 40.13(c)(1)(vi)

In a memorandum dated July 16, 1981 from you to Mr. Higginbotham, IEHQ, you asked for guidance on the application of 10 CFR 40.13(a) and (c) to material being processed by Molybdenum Corporation of America (MolyCorp). The memorandum was forwarded to us in October of this year and we understand from Dr. Friedman, Region I, that a written OELD opinion would be useful in the current undertaking to license MolyCorp.

As we understand it, MolyCorp is urging a view of 10 CFR 40.13(c) that would permit it to include both incoming raw material for rare earth processing and end of processing waste streams under the exemption for rare earth products that do not exceed .25% source material by weight. 10 CFR 40.13(c)(1)(vi). In your memorandum the view was expressed that the .25% by weight exemption applies only to rare earth products.

We agree. The rule in question (10 CFR 40.13(c)(1)(vi)) was first promulgated by the AEC on March 20, 1947 (12 FR 1855) and was contained in "Schedule I" in a provision then designated as 10 CFR 40.60. Schedule I was referenced in former § 40.29, a registration provision for unlicensed persons who found themselves in possession of 10 pounds of source material in ore, or 1 pound of refined source material. The registration provision, however, excluded "refined source material incorporated in products listed in Schedule I (§ 40.60)" (emphasis supplied). Schedule I listed "(f) Rare earth metals and compounds, mixtures and products containing not more than 0.25% by weight thorium, uranium, or any combination of these." Present 10 CFR 40.13(c)(1)(vi) contains identical wording. Thus, we can conclude that the items referred to in § 40.13(c)(1)(vi) are finished commercial products of the rare earth refining process in question.

This reading is reinforced by the structure of the present rules in 10 CFR 40.13. 10 CFR 40.13(a) and (b) would be meaningless if 40.13(c)(1)(vi) also included raw material and waste streams, as urged by MolyCorp. An exemption for raw material, e.g. for ores or concentrates used as raw material has to

be justified in terms of either §§ 40.13(a) or (b). Disposal of the radioactive waste should be regulated under 10 CFR 20.301, or under 10 CFR Part 61, as appropriate.

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