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RECORD #31

TITLE: Exemption of H-3 or C-14 Contaminated Scintillation Media
or Animal Tissues Under 10 CFR 20.306

FICHE: 25754-125

SEP 8 1981

B. ... Info

Mr. Jay D. Dunkleberger
Director of Nuclear Operations
New York State Energy Office
Rockefeller Plaza
Albany, NY 12223

Dear Mr. Dunkleberger:

This is in response to your letter dated June 3, 1981 requesting NRC guidance on certain jurisdictional questions regarding NRC's rule of disposal of certain H-3 and C-14 waste.

Question 1: Your interpretation that upon determination by a licensee that H-3 or C-14 contaminated scintillation media or animal tissue qualifies for disposal as non-radioactive waste under Section 20.306 or equivalent Agreement State provision, the waste is exempt from further regulations as radioactive material is correct.

Question 2: In the case where radioactive waste exempt from regulations under 10 CFR 20.306 in one jurisdiction is transferred into the jurisdiction of an Agreement State that has not adopted comparable regulations, the waste then becomes subject to regulation and licensing by that State.

Question 3: Section 20.306 pertains to the disposal of specific wastes, wastes being garbage or trash-material without value. By disposal we mean removing the waste from the public and dispersing it to the environment through incineration, landfill burial, etc. It should be noted all disposal techniques decrease the concentration of the waste material. We would consider any processing of the waste which increases the volume concentration of the waste byproduct material above the specified concentration in 20.306 as an inappropriate disposal technique. Such processes (e.g., reclamation) would be subject to licensing. Note that combining waste scintillation media with fuels for combustion or incineration is acceptable under the above provisions because the primary constraint, that concentration not be increased, is met, even though an economic value may be derived from the waste.

Question 4: The likelihood of the situation posed in question 4, that someone would seek to import waste from Canada seems remote. In any event, Section 20.306 states that "Any licensee" may dispose of the specified wastes. Scintillation media or animal carcasses originating

outside the U.S. clearly were not disposed of by "any [USNRC] licensee," hence 20.306 does not apply to such wastes. As a point of clarification, the wastes specified in 20.306 have not been exempted from licensing requirements, but can be disposed without regard to its radioactivity, provided the stipulations of 20.306 were met. Pursuant to 10 CFR 110.11 an NRC or Agreement State licensee, such as a waste broker, is exempt from an import license to the extent he imports byproduct material which he is authorized to possess under an exemption from licensing requirements or a specific or general license issued by the Commission or an Agreement State.

If we can be of further assistance, please contact us.

Sincerely,

Original Signed by
DONALD A. NUSSBAUMER

Donald A. Nussbaumer
Assistant Director
for State Agreements Program
Office of State Programs

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June 3, 1981

Mr. Donald Nussbaumer,
Assistant Director for State Agreement
Programs
Office of State Programs
United States Nuclear Regulatory
Commission
Washington, D.C. 20555

Dear Mr. Nussbaumer:

Representatives of New York State's radioactive material control agencies recently met to review and consider NRC's new rule on the disposal of certain H-3 and C-14 contaminated waste (FR Vol. 46, No. 47, pages 16230-16234, March 11, 1981). Based on that deliberation, it was generally agreed that New York should proceed to adopt comparable provisions and changes in its applicable regulations. Recognizing that the regulation amendment process can be time-consuming, the agencies further agreed to provide equivalent interim relief, upon request by licensees on a case-by-case basis, via specific license conditions.

It should be noted that the New York City Department of Health was unable to send a representative to this meeting, and at this time, we have received no specific indication of their acceptance or rejection of this strategy. While the City has expressed qualified endorsement of the NRC regulation, it has expressed concern over incineration of such waste at individual facilities as opposed to a single centralized location. I am advised that the City has established a Task Force to review this matter further.

In considering the NRC rule, a number of jurisdictional questions were raised which should be resolved or clarified before the State formally proceeds to adopt comparable provisions. Consequently, we would appreciate receiving, as soon as possible, NRC guidance on the following items:

Mr. Donald Nussbaumer
June 3, 1981

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1. It appears that, upon determination by a licensee that H-3 or C-14 contaminated scintillation media or animal tissue qualifies for disposal as non-radioactive waste under Section 20.306 or equivalent Agreement State provision, the same is exempt from further regulation as radioactive material. Please confirm this interpretation.
2. If the interpretation in Item 1 above is accurate, would it continue to apply where Section 20.306 waste is transferred into the jurisdiction of an Agreement State that has not adopted comparable provision, or conversely, would it then be subject to regulation and possible licensing by that State?
3. Does the phrase, "may dispose of", as used in the opening statement of Section 20.306, include the transfer of material to another person for purposes of recycling? For example, would the reclaiming of toluene or the blending of liquid scintillation media with other solvents or fuel oil for the purpose of commercial distribution be permitted under this rule? Conversely, would Subsection 30.14(d) or the equivalent Agreement State provision preclude such activity?
4. What is the status of H-3 or C-14 contaminated scintillation media or animal tissue meeting the conditions of Section 20.306, but originating outside the United States (e.g., material imported from Canada)? Would such material be exempt from NRC and/or Agreement State regulation? While NRC or an Agreement State would have jurisdiction over its licensees making determinations of qualification under Section 20.306 or equivalent, and therefore enforcement capability, it is difficult to see how such oversight could be exercised for imported materials.

Your assistance in addressing these questions will be greatly appreciated.

Sincerely,

Jay D. Dunkleberger,
Director of Nuclear Operations

JDD/JPS:cjm

cc:

Dr. Francis J. Bradley
Mr. Thomas J. Cashman
Mr. Bernard Heald
Dr. Karim Rimawi
Dr. Leonard R. Solon