

201

RECORD #201

TITLE: Import of Cigarette Plates Containing Source Material

FICHE:

Hickey

OCT 20 1982

MEMORANDUM FOR: Joseph D. LaFleur, Jr.  
Deputy Director  
Office of International Programs

Donald A. Nussbaumer, Assistant Director  
for State Agreements Program, SP

FROM: Vandy L. Miller, Chief  
Material Licensing Branch  
Division of Fuel Cycle and  
Material Safety, NMSS

SUBJECT: IMPORT OF CIGARETTE PLATES CONTAINING SOURCE MATERIAL

Enclosed for your information is a letter from Robert Fonner (ELD) to Eli Port concerning a consumer product containing source material. Mr. Port's client recently imported this product from Japan for possible distribution to consumers in the United States. The product is a plate containing monazite sand (4% Thorium), and allegedly reduces harmful properties of cigarettes when placed on the outside of a cigarette pack. The product is called a "Nicotine Alkaloid Control Plate", and is manufacturer by KOEI Bussan Co., Ltd. of Japan.

It is our position, concurred in by B. Singer, G. Page, and R. Fonner, that incorporation of source material into a consumer product constitutes processing, and therefore this product does not qualify for any exemption in 10 CFR 40.13. Therefore, only specific or general licensees may possess this product. As a practical matter, there appears to be no legal purpose for possession of this product in the U.S., because its sole purpose is for personal use by cigarette smokers.

Mr. Port's client has indicated by telephone that this product has been imported into Agreement States, possibly California, New York, and Florida, but did not provide specific information. We received a call from a Mr. Earl Linthicum of Florida (813-923-2551), who inquired about the legality of these products. However, when we informed him that possession or distribution of the products for consumer use was a violation of NRC regulations, he declined to provide further information concerning the name of his company or its activities.

We would appreciate it if the Office of State Programs would inform the Agreement States of our position on this matter, with a strong suggestion that they should not take any actions or make any statements that would encourage importation of these products for consumer use. If time permits, you may wish to mention this matter at the Agreement State meeting on October 26, 1982.

OFFICE						
SURNAME						
DATE						

Joseph D. LaFleur, Jr.  
Donald A. Nussbaumer

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We also suggest that the Office of International Programs contact KOEI Bussan and/or the Japanese government, and inform them that import and/or possession of this device for personal use or distribution is a violation of federal regulations. Therefore, this product should not be exported from Japan to the U.S., and Bussan Co. should not make any representation to potential customers that their product is legal in the U.S.

If you have questions concerning this matter, please feel free to contact me or John Hickey at 427-4002.

Vandy L. Miller, Chief  
Material Licensing Branch  
Division of Fuel Cycle and  
Material Safety, NMSS

Enclosure: As stated

DISTRIBUTION(w/enclosure)

BSinger	NBassin
EWright	RGPage
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AGibson (RII)	JMiller (RIII)
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FC Central File	
JHickey	VLMiller

OFFICE ▶	FCMLB	FCMLB				
SURNAME ▶	JHickey/sc	VLMiller				
DATE ▶	10/3/82	10/2/82				



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

OCT 15 1982

Mr. Eli A. Port  
Radiation Safety Services, Inc.  
827 Simpson Street  
Evanston, Illinois 60201

Dear Mr. Port:

In your letter to me of September 24, 1982, you requested an opinion on the application of 10 CFR 40.22(a) and 10 CFR 40.13 to a consumer product called a "Nicotine Alkaloid Control Plate" manufactured in Japan. The plate appears to consist of a light metal plate (aluminum) on one side of which is glued a layer of finely ground thorium containing monazite sand which in turn is covered with a thin piece of tissue paper. It is estimated that the plate is composed of 50 percent monazite sand with 4 percent thorium content. On being placed sand side next to a package of cigarettes the alpha particles emitted by the thorium are supposed to denature and reduce nicotine, tar, and harmful gas.

It is the staff's opinion, in which the Office of Executive Legal Director concurs, that your client, as a general licensee under 10 CFR 40.22(a), may possess the nicotine alkaloid control plates for business purposes only, and may transfer such items to another licensee up to the quantity limit of the general license. However, 10 CFR 40.22(a) does not authorize transfer to persons not themselves specific or general licensees. A transfer cannot be made to persons other than specific or general licensees, unless a regulation of the Commission authorizes such exempt distribution. No such exemption exists in 10 CFR Part 40 for the product described in your letter. Therefore, neither your client nor anyone else can possess the plates for personal use, which appears to be their prime purpose. Any personal use of the device by your client, or transfer of the product to others for personal use, would constitute a violation of NRC regulations, and subject your client and his customers to enforcement action.

10 CFR 40.13(b) exempts persons from licensing only with respect to unrefined and unprocessed ores. Unrefined and unprocessed ore is defined as ore in its natural state prior to any processing. Thus, bulk monazite sand would be exempt. However, any further manufacturing step, such as incorporating the monazite sand into a consumer product, would be viewed by the NRC staff as a processing of the ore. Accordingly, even if the product were modified to incorporate monazite sand without further reduction in particle size, there would still be processing of the ore.

Finally, as a general observation, it appears to the staff of the NRC that the product cannot serve the purpose for which it has been manufactured. It is common knowledge in physics that alpha particles are absorbed by a few

thin sheets of paper, or by a single thin layer of metal foil, both of which are common packaging materials for cigarettes. If the plate were used as directed it is highly unlikely that any alpha particles emitted by the thorium would even penetrate to the tobacco, but would instead be absorbed by the packaging materials. Under these circumstances we have little doubt that a petition to amend 10 CFR 40.13(c) to allow exempt distribution of this item would be rejected.

Sincerely yours,

Robert L. Fonner  
Attorney  
Office of the Executive Legal Director

DISTRIBUTION:  
RLFonner  
WJ0lmstead  
JHickey , NBassin, RGPPage, NMSS  
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AGibson, Region II  
JMiller, Region III

OFC	: OELD	: OELD	: NMSS	:	:	:	:
NAME	: RLFonner:rb	: WJ0lmstead	: John Hickey	:	:	:	:
DATE	: 10/14/82	: 10/14/82	: 10/14/82	:	:	:	:

OCT 13 1982

MEMORANDUM FOR: Robert L. Fonner  
Office of the Executive Legal Director

FROM: Vandy L. Miller, Chief  
Material Licensing Branch  
Division of Fuel Cycle and  
Material Safety

SUBJECT: CIGARETTE PLATES CONTAINING THORIUM

As you requested in your note dated September 20, 1982, we have reviewed Mr. Port's letter dated September 14, 1982, discussing a consumer product containing thorium. We have discussed this matter in numerous telephone conversations with Region III, Mr. Port, and his client. Our position is as follows:

1. Our assessment based on information provided by Mr. Port's client indicates that the plate contains two per cent thorium. Therefore, it would not qualify for the exemption in 10 CFR Part 40.13(a). Furthermore, we believe that any manipulation of the sand to incorporate it into a consumer product constitutes processing. Therefore, the 40.13(b) exemption for unprocessed ore does not apply.
2. Any industrial firm can receive up to 15 pounds of thorium for commercial purposes pursuant to 10 CFR 40.22. If Mr. Port's client qualifies as an industrial firm, he may in theory import the product for legitimate commercial use. However, since the product does not appear to qualify as an exempt consumer product under 10 CFR 40.13, there does not appear to be any useful purpose to be served by importation of the product.
3. Mr. Port or his client may propose to apply for a specific license to distribute this product to the general public. We would not grant such an application without a rule change because there is no exemption in 10 CFR 40.13 to allow such distribution.

If you have further questions, please feel free to contact me or John Hickey.

Original Signed By  
VANDY L. MILLER

Vandy L. Miller, Chief  
Material Licensing Branch  
Division of Fuel Cycle and  
Material Safety

DISTRIBUTION

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OFFICE	FCMLB	FCMLB	FCMC	FCMLB		
URNAME	JHickey/sc	VLMiller	B8inger	RPage		
DATE	10/5/82	10/17/82	10/2/82	10/17/82		

RADIATION SAFETY SERVICES, Inc.

827 Simpson Street  
Evanston, Illinois 60201

312/866-7744

September 14, 1982

Mr. Robert Fonner  
Office, Executive Legal Division  
USNRC  
Washington, DC 20555

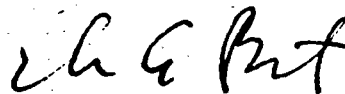
Dear Mr. Fonner:

Enclosed is a sample of our client's product. This is a thorium containing device intended to reduce the tar and nicotine content of cigarets.

It is my belief that my client is subject to the provisions of 10 CFR 40.2204 as a commercial firm for commercial purposes. I would appreciate your evaluation of the applicability of this paragraph. I would also appreciate your separately determining if the client may be exempted from regulations pursuant to 10 CFR 40.13(b) if the product is modified to utilize unrefined and unprocessed monazite sands.

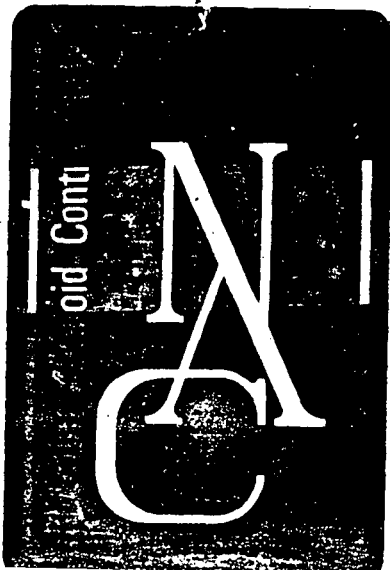
If you have any questions, please contact me at 312/866-7744.

Sincerely,



Eli A. Port  
Certified, American Board of  
Health

EAP:ws



Thank you very much for purchasing your NAC<sub>2</sub> Plate. NAC<sub>2</sub> Plate—Nicotine Alkaloid Control Plate—reduces nicotine and tar using a totally different approach from filters.

The mechanism is based on the chemical hypothesis that "Alpha ions" emitted from natural ore denature and reduce nicotine, tar and harmful gas. Of course, NAC brings you soft, mild flavor without affecting the original tobacco taste. It keeps its effectiveness practically forever. The application "a method of reducing basic substances (nicotine - tar) in cigarette smoke and a device based on this method" has been patented in four nations.

- Chemical Inspection and Testing Institute, Japan (CITI)  
(Proved by experiments on reduction of harmful substances)
- The Osaka Municipal Research Institute of Technical Industry  
(Proved by experiments on reduction of nicotine and tar)

**[How to Use]**

As in the figure at right, place the NAC<sub>2</sub> Plate between package and cellophane paper with the effective side toward the package.

With NAC you can enjoy the unique stimulation of cigarette, and the golden moments of watching smoke rise slowly. NAC assures you of rich tobacco flavor. Just light a cigarette as usual. With your nerves relieved and refreshed, you can get back to work.

We also manufacture and sell various types of ladies' cigarette cases for NAC<sub>2</sub> Plates.  
\*KOEI Bussan Co., Ltd.

