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RECORD #190

TITLE: Disposal of Exempt Quantities of Byproduct Material

FICHE:



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

February 12, 1987

MEMORANDUM FOR: Those on Attached List

FROM: L. J. Cunningham, Chief
Section #2
Operating Reactor Programs Branch
Division of Inspection Programs
Office of Inspection and Enforcement

SUBJECT: DISPOSAL OF EXEMPT QUANTITIES OF
BYPRODUCT MATERIAL - OGC VIEWS

Enclosed for your information is a memorandum from OGC that responds to our January 7, 1987 memorandum (from J. G. Partlow to W. J. Olmstead). Our January memorandum asked if OGC had any legal objections to maintaining the long-standing NRC staff position that 10 CFR Sections 20.301, 30.14, 30.18 and 40.13(a) do not authorize waste disposal by transfer to persons who do not hold a specific NRC license authorizing them to receive it.

Our January memorandum and the enclosed response will be incorporated in the Health Physics Positions file and IE Manual.

The issue of clarifying rulemaking will be addressed separately.

A handwritten signature in cursive script, appearing to read "L. J. Cunningham".

L. J. Cunningham, Chief
Section #2
Operating Reactor Programs Branch
Division of Inspection Programs
Office of Inspection and Enforcement

Enclosure:
Memo from Fonner to Partlow
dated 1/20/87

Addressees for Memorandum Dated: February 12, 1987

Mohamed M. Shanbaky, Chief
Facilities Radiation Protection Section
Region I

Walter J. Pasciak, Chief
Effluents Radiation Protection Section
Region I

Charles M. Hosey, Chief
Facilities Radiation Protection Section
Region II

John E. Kahle, Chief
Radiological Effluents & Chemistry Section
Region II

L. Robert Greger, Chief
Facilities Radiation Protection Section
Region III

Martin C. Schumacher, Chief
Radiological Effluents and Chemistry Section
Region III

Blaine Murray, Chief
Facilities Radiological Protection Section
Region IV

Gregory P. Yuhas, Chief
Facilities Radiological Protection Section
Region V



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NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

JAN 30 1987

MEMORANDUM FOR: James C. Partlow, Director
Division of Inspection Programs, OIE

FROM: Robert L. Fonner
Deputy Assistant General Counsel for
Rulemaking and Fuel Cycle
Office of the General Counsel

SUBJECT: DISPOSAL OF EXEMPT QUANTITIES OF
BYPRODUCT MATERIAL

In your memorandum to Mr. Olmstead of January 7, 1987, you asked if this office had any legal objection to OIE continuing to view 10 CFR 30.18 as not authorizing disposal of exempt quantities of byproduct material. Your question was prompted by an internal OELD memorandum that noted an ambiguity in 10 CFR 30.18 that should be corrected in order to present a rock solid basis on which to take issue with a licensee's reliance on that provision to justify disposal of small amounts of radioactivity in waste. The issue in this office was precipitated by a memorandum from the Administrator for Region II for a legal reading of the regulation in question. The material submitted with your memorandum of January 7, also demonstrates the confusion surrounding the citation of 10 CFR 30.18 and the need to clarify the application of the regulation to disposal of exempt quantities of materials. You agree with the need for clarification but propose in essence that the agency proceed with enforcement prior to such clarification on the view that 10 CFR 30.18 does not authorize disposal or transfer for disposal of the exempt quantities.

There is no objection to adhering to that view. A case can be made for it based upon a long term agency understanding that 10 CFR 30.18 does not authorize disposal or transfer for disposal. (See e.g., Note to Dr. Leo Wade from Eric Jakel, June 10, 1975, attached). Because there is some confusion in the record, however, it is not risk free. Therefore, we continue to urge prompt initiation of a clarifying rule. We will be pleased to assist you in its preparation.

A handwritten signature in cursive script that reads "Robert L. Fonner".

Robert L. Fonner
Deputy Assistant General Counsel for
Rulemaking and Fuel Cycle
Office of the General Counsel