



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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Duncan White, Branch Chief
Agreement State Program
US Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Mr. White:

It has come to our attention that the regulations governing transportation of low level radioactive waste are not being interpreted consistently throughout the country. As you are aware, since becoming an Agreement State, New Jersey has been interpreting our regulations regarding transportation at N.J.A.C. 7:28-6.1 (10 CFR 20 adopted by reference) with advice from Nuclear Regulatory Commission (NRC) Region 1 and Headquarters staff. However, our interpretations are being challenged as interfering with interstate commerce. We respectfully request a definitive interpretation of the NRC transportation regulations regarding licensed low level radioactive waste so that there is consistency throughout the United States. Specifically, there is confusion regarding the definition of waste collector and the definition of common carrier. The specific sections of the code that we believe require clarification are:

10 CFR 20.2001(b): A person must be specifically licensed to receive waste containing licensed material from other persons for: (1) Treatment prior to disposal; or (2) Treatment or disposal by incineration; or (3) Decay in storage; or (4) Disposal at a land disposal facility licensed under part 61 of this chapter; or (5) Disposal at a geologic repository under part 60 or part 63 of this chapter;
and

Appendix G to 10 CFR 20: *Waste collector* means an entity, **operating under a Commission or Agreement State license** [emphasis added], whose principal purpose is to collect and consolidate waste generated by others, and to transfer this waste, without processing or repackaging the collected waste, to another licensed waste collector, licensed waste processor, or licensed land disposal facility.

New Jersey interprets these sections of the code to mean that the transportation company that is receiving licensed waste and transporting it requires a specific license or must apply for and receive reciprocity. Here are some examples:

(a) A pharmaceutical company in New Jersey packages their waste according to all packaging and transportation regulations. They hire a transportation company that comes to their facility. The employees of the pharmaceutical company load the truck, fill out the manifests, ensure proper placarding, and take readings to ensure all exposure limits are met. The truck then goes to a waste processor in Tennessee. New Jersey believes the transportation company that was hired by the pharmaceutical company requires a license even though the truck is carrying waste from only one facility. Is this interpretation correct?

(b) Same scenario as (a) only the transportation company then goes to another facility to pick up more waste. Again, New Jersey believes the transportation company requires a license. Is this interpretation correct?

(c) A licensed waste broker is hired by a pharmaceutical company to package and load a vehicle that is owned and operated by an unlicensed waste transporter. The waste broker applies for and receives reciprocity, however the transportation company who is transporting the licensed waste to another licensed waste processor does not apply for reciprocity. Is this a violation of 10 CFR 20.2001(b)(4) and of Appendix G to 10 CFR 20 via the definition of a waste collector? Is it a violation of any other part of the NRC regulations?

Low level radioactive waste transporters have insisted that they are classified as common or contract carriers and are thus exempt from these regulations as per 10 CFR 30.13 for byproduct material, 40.12 for source material, and 70.12 for special nuclear material. New Jersey's understanding is that the common carrier only applies to radioactive materials, not radioactive waste. Our interpretation is that common carriers should not be transporting radioactive waste. Is this interpretation correct?

Some waste transporters claim that since they do not actually consolidate waste, they are not required to be licensed. Whether a transportation company collects waste from one location or many locations, the reason for licensing them would still apply and they would require licensing. Is this interpretation correct?

Transportation companies also claim that because the waste is never consigned to them on the manifest, they never possess it and therefore do not fall under any NRC regulations. New Jersey's understanding is that since they receive, transfer, and possess licensed radioactive waste, they fall under the NRC regulations. Is this interpretation correct?

New Jersey believes we are interpreting the regulations as they were intended. If we had an interpretation from the NRC, which clearly indicates one way or the other that transporters of licensed waste do or do not require a license, we would post such a letter

on our website and would abide by your interpretation. This would also be helpful in addressing the issues raised by our licensees who hire these transporters.

Because New Jersey's interpretation does affect interstate commerce, and because we are told other states do not require licenses for waste collectors, we need a definitive interpretation from the NRC, not a response that identifies the agreement states as the authority to regulate as they see fit.

Sincerely,



Patricia Gardner, Manager

c: Donna Janda, NRC Region 1