

June 21, 2011

Ms. Patricia Gardner, Manager
Bureau of Environmental Radiation
Mail Code 25-01
P.O. Box 420
Trenton, NJ 08625-5400

Dear Ms. Gardner:

This is in response to your letter dated January 4, 2011, regarding the transportation of low-level radioactive waste and New Jersey's interpretation of the requirements in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 20 for waste and waste collectors. New Jersey is not interpreting the regulations in the same manner as the U.S. Nuclear Regulatory Commission (NRC) and the other Agreement States. I would like to offer the following discussion on pertinent requirements and acceptable practices for NRC licensee byproduct, source and special nuclear material waste shipments to clarify NRC's position and implementation of 10 CFR Part 20 and 71 requirements for licensed material (byproduct, source and special nuclear material) in response to your questions.

- **NRC transport regulations:**

- Under 10 CFR Part 71, NRC licensees are permitted to deliver licensed material to carriers for transport.
 - Part 71.17(a) specifies that "A general license is issued to any licensee of the Commission to deliver to a carrier for transport, licensed material in a package for which a license, certificate of compliance (CoC), or other approval has been issued by the NRC" (emphasis added).
 - Waste shipments from NRC byproduct material licensees tend to be low level and therefore may be exempt from the Part 71.17 general license requirement and certain other provisions of Part 71 [e.g., per Part 71.14(b)]. Notwithstanding exemption from the requirement for a Part 71 general license, paragraph 71.5(a) would still apply to waste shipments and specifies that "each licensee who...delivers licensed material to a carrier for transport...shall comply with the applicable requirements of the DOT..." (emphasis added).

- **NRC transport-related material license exemption regulations:**

- Under 10 CFR Part 30.13, common and contract carriers are specifically exempt from NRC's material licensing requirements, and do not require a license, to the extent that they "transport or store material in the regular course of carriage for another or storage incident thereto." Although (unlicensed) common or contract carriers physically control byproduct material shipments temporarily during transport, carriers are not authorized to receive or possess NRC-licensed byproduct material under an NRC Part 30 license. Similar provisions are found in 10 CFR Part 40.12 for source material and 10 CFR Part 70.12 for special nuclear material.

- Common or contract carriers do not “receive” or “possess” byproduct, source or special nuclear material in the process of transporting or storing licensed byproduct, source or special nuclear material. Under NRC regulations in 10 CFR Parts 30, 40, and 70, the word “receiving” is used in conjunction with the transfer of byproduct, source and special nuclear materials from one licensee to another. The licensee who originates the transfer maintains responsibility for the byproduct, source or special nuclear material until the transfer is complete. The common or contract carrier provides the transport function but is not considered to have received the byproduct, source or special nuclear material.
- NRC is not aware of any information that indicates a need to license common and contract carriers to transport radioactive materials (including low-level waste) in order to further protect the public health and safety, and has no intent or plans to do so.
- Byproduct, source and special nuclear material contained in waste is not excluded from the carrier exemption.
- **NRC material transfer regulations:**
 - The transfer of NRC licensed byproduct material is a regulated activity [see in particular 10 CFR Part 30.41(a), (b)(5), (c), and (d)]. Basically, an NRC licensee may only transfer possession of NRC licensed material to another licensee that is authorized to receive and possess it.

In a waste shipment, under Part 30.41, an NRC licensee is transferring licensed byproduct material to a licensed waste facility, not to an unlicensed carrier or any other unlicensed third party. The carrier simply enables the transfer by transporting the licensee’s byproduct material to the waste facility.

- **DOT hazardous material transportation communication regulations:**
 - Title 49 of the *Code of Federal Regulations* (49 CFR) § 172.204(a) Shipper’s certification states “...each person who offers a hazardous material for transportation shall certify that the material is offered for transportation in accordance with this subchapter by printing (manually or mechanically) on the shipping paper containing the required shipping description the certification contained in paragraph (a)(1) of this section or the certification (declaration) containing the language contained in paragraph (a)(2) of this section.”
 - 49 CFR 172.204(a)(1) “This is to certify that the above-named materials are properly classified, described, packaged, marked and labeled, and are in proper condition for transportation according to the applicable regulations of the Department of Transportation.”
 - 49 CFR 172.204(d) Signature. “The certifications required by paragraph (a) or (c) of this section: (1) Must be legibly signed by a principal, officer, partner, or employee of the shipper or his agent.”
 - Under 49 CFR 172.204, DOT holds the shipper and/or the agent responsible for compliance with DOT’s regulations.

NRC's regulations do not prescribe a single, or preferred, method for low-level waste transfer in order to provide licensees with operational flexibility. NRC licensees and other involved parties should understand, acknowledge, and clearly specify their respective roles and responsibilities in (mutually agreed) transfer and transport arrangements so as to avoid any misunderstandings or confusion. Under Part 71, an NRC licensee delivers licensed material to a carrier for transport only. The licensee retains possession of that material under its NRC license, and overall responsibility for that material (including during transport and any storage incident thereto), until the material has been received by another licensee authorized to possess the material.

An NRC licensee may employ an agent to perform transport-related functions on its behalf, including signing the Shipper's certification for the licensee's shipment, but the licensee retains overall responsibility for the licensed material shipment, including the agent's related activities until the transfer of material to another licensee has been completed. The licensee should therefore assure that any agents it may employ are properly trained and certified in accordance with NRC and DOT regulations as discussed above. Should a transport-related incident involving an NRC licensee's low-level waste shipment occur, NRC would contact the licensee who had authorized possession of the material at the time of transport for related information, or for corrective action should any non-conformance or violation be identified, or for assistance should an emergency response situation exist.

In example (a) and (b) of your letter, NRC would not require the transportation company, as contract or common carrier to be licensed. The licensee would be the pharmaceutical company. As described in example (c), there are no violations of NRC regulations in 10 CFR 20.2001(b)(4) or Appendix G to 10 CFR 20, Definition of waste collector.

I hope this addresses your concerns. If you have any additional questions, please contact me at 301-415-2598.

Sincerely,

/RA/

A. Duncan White, Chief
Agreement State Program Branch
Division of Material Safety
and State Agreements
Office of Federal and State Materials
and Environmental Management Programs

cc: Donna Janda, RSAO
Region I

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cc: Donna Janda, RSAO
Region I

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