

June 28, 2011

Mr. William M. Arnold, President
Century Industries
P.O. Box 17084
Bristol, VA 24209

SUBJECT: INPUT REQUEST FOR CERTIFICATE OF COMPLIANCE NO. 9342

Dear Mr. Arnold:

By letter dated April 30, 2011, you asked Elva Bowden Berry, an attorney in the NRC Office of the General Counsel, to advise you concerning your rights and obligations under Certificate of Compliance (CoC) No. 9342. The NRC staff attorneys cannot provide legal advice to the industry or members of the public; instead, their role is to advise the Commission and staff on legal matters pertaining to agency requirements. Therefore, we cannot provide legal advice in response to your questions 1 through 10.

Because NRC regulations 10 CFR 71.105 through 71.137 address aspects of your questions 11 through 16, staff has provided responses as indicated in the Attachment to this letter.

We thank you for your efforts to gain a better understanding of what is required to comply with regulatory requirements and hope the attached information is helpful. If you have any additional questions regarding your CoC, please contact me or Pierre Saverot of my staff at (301) 492-3408.

Sincerely,

/RA/

Michael D. Waters, Chief
Licensing Branch
Division of Spent Fuel Storage and Transportation
Office of Nuclear Material Safety
And Safeguards

Docket No. 71-9342
TAC No. LA0129
Attachment

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Distribution: Eric Benner, Jim Pearson, Earl Love, Elva Bowden Berry
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OFC:	SFST	SFST	SFST	SFST
NAME:	PSaverot	MDeBose	EBowden Berry/e-mail	MWaters
DATE:	06/13/2011	06/13/2011	6/28/2011	6/26/2011

ATTACHMENT

Q.11. Am I allowed to grant another party to work under our CoC to fabricate packages?

Response: Yes.

Q.12. What are our obligations as the CoC holder? (Understood as: What are our obligations as the CoC holder if “another party” performs work under our CoC to fabricate packages?)

Response: “The licensee, certificate holder, and applicant for a CoC are responsible for the quality assurance requirements as they apply to design, fabrication, testing, and modification of packaging.” 10 CFR 71.101(a).

In other words, the CoC holder retains all the responsibility for ensuring the NRC approved design is maintained. The CoC holder is responsible specifically, to apply their NRC approved Quality Assurance (QA) program to provide surety that the design is controlled while the other party performs the work.

This should include performing an audit of the “other party” to ensure their QA program is acceptable to control the work. Inspections performed after the audit should be used to ensure that the “other party” is complying with their QA program. In addition, if the “other party” performs fabrication, the CoC holder is expected to apply their QA program to control fabrication such that it ensures the NRC approved design is maintained during the fabrication process.

If the “other party’s” QA program is found not to be acceptable during the CoC holder’s audit, then the CoC holder should require that the “other party” perform their work under the CoC holder’s QA program. Inspections performed by the CoC holder should be used to ensure that the “other party” is complying with the CoC holder’s QA program.

Q.13. Are we required to provide QA program review to ensure that a sub-license fabricator has a qualified program?

Response: Section 71.103(a), “The licensee, certificate holder, and applicant for a CoC shall be responsible for the establishment and execution of the quality assurance

program. The licensee, certificate holder, and applicant for a CoC may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, or any part of the quality assurance program, but shall retain responsibility for the program. These activities include performing the functions associated with attaining quality objectives and the quality assurance functions.” 10 CFR 71.103(a). (Emphasis added.)

The CoC holder has to determine that the other party's QA program is acceptable to control the NRC approved package design. If the “other party's” QA program is found not to be acceptable under 10 CFR 71.101(a), then the CoC holder becomes responsible for the “other party's” application of the CoC holder's QA program. In other words, the answer is yes so long as the sub-licensee has verified compliance with all aspects of the fabricator's QA program to determine the effectiveness of the program.

Q.14. Are we obligated to audit prospective sub-licensees?

Response: Yes. See response to question 13 above.

Q.15. What can be the impact of our audit on a potential sub-licensee?

Response: The finding should be either that the CoC holder determines that the “sub-licensee” is performing quality activities according to the requirements of the CoC holder's QA program or not. If not, corrective action should be imposed on the “sub-licensee” accordingly. This corrective action would determine the impact.

Q.16. Are we required to inspect packages fabricated by another manufacture acting as a sub-licensee?

Response: Section 71.85 provides that: “Before the first use of any packaging for the shipment of licensed material --

(a) The licensee shall ascertain that there are no cracks, pinholes, uncontrolled voids, or other defects that could significantly reduce the effectiveness of the packaging;

(b) Where the maximum normal operating pressure will exceed 35 kPa (5 lbf/in²) gauge, the licensee shall test the containment system at an internal pressure at least 50 percent higher than the maximum normal operating pressure, to verify

the capability of that system to maintain its structural integrity at that pressure;
and

(c) The licensee shall conspicuously and durably mark the packaging with its model number, serial number, gross weight, and a package identification number assigned by NRC. Before applying the model number, the licensee shall determine that the packaging has been fabricated in accordance with the design approved by the Commission.” 10 CFR 71.85.

In other words, the CoC holder should inspect packages as noted in the response to question 12 above.