

From: Hampton Newsome
To: WNP9.DMS4, WNP9.PHL
Date: 10/29/96 10:46am
Subject: Tonowanda Letter

Attached is the **OGC** rewrite of the placeholder letter to FACTS on Tonowanda. Please let me know if you see any significant problems with it. Otherwise, **we have no legal objection to sending it out.**

Thanks.

CC: FXC

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PDR STPRG ESCOEN
PDR



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19408-1415

April 23, 1996

Paul J. Merges, Ph.D.
Chief, Bureau of Pesticides & Radiation
Division of Solid & Hazardous Materials
New York State Department
of Environmental Conservation
50 Wolf Road, Room 402
Albany, NY 12233-7255

Dear Dr. Merges:

In your letter dated February 29, 1996, you requested that we provide a written response either confirming your understanding of the U.S. Nuclear Regulatory Commission's (NRC) position relative to exercising its regulatory control over Atomic Energy Act (AEA) Section 11e(2) material, or explain the NRC's role and practice relative to this material.

The current NRC practice of not licensing materials at Formally Utilized Sites Remedial Action Program (FUSRAP) sites has been the NRC's practice since the creation of the NRC in 1975. We are currently searching the archives for the formal documentation of this practice. This letter will serve as an interim response to your request until that information becomes available.

Relative to the Section 11e(2) material you described, and the conditions under which it currently is situated in a Tonawanda, New York landfill, we believe the material in question does not represent an immediate health and safety hazard. We acknowledge that, under the Agreement between the NRC and New York, you do not exercise total regulatory jurisdiction over the material. However, the State has regulatory authority over radiological constituents other than 11e(2) material, non-AEA material, and non-radiological constituents, and should take action deemed appropriate to protect the health and safety of the public. This includes evaluating potentially hazardous environmental conditions at the site and exerting appropriate controls until the U.S. Department of Energy completes its responsibilities under FUSRAP.

If you have any questions, please contact me.

Sincerely,

Craig Z. Gordon
Regional State Agreements Officer

cc: R. Kirk, US DOE
R. Aldrich, NYS Department of Labor
K. Rimawi, NYS Energy Research & Development Authority
M. Sorgan, NYS Department of Law

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