

## DEPARTMENT OF HEALTH SERVICES

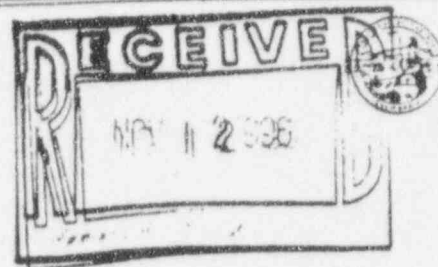
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(916) 445-0931

November 5, 1996



Mr. Ross A. Scarano, Director  
Division of Nuclear Materials Safety  
U. S. Nuclear Regulatory Commission  
Region IV  
611 Ryan Plaza Drive, Suite 400  
Arlington, Texas 76011-8064

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Dear Mr. Scarano:

This letter is in response to your letter of April 8, 1996, regarding the current radiologic status of two sites in Burbank, California, formerly licensed by either the U. S. Nuclear Regulatory Commission (NRC) or its predecessor, the U. S. Atomic Energy Commission (AEC).

We appreciate the efforts currently being made to reassess these sites that were previously released for unrestricted use by the NRC and the AEC. As you are aware, the Radiologic Health Branch (RHB) has participated or assisted in a number of these onsite and laboratory evaluations. Mr. H. Dean Chaney of your staff is to be especially commended for his professionalism and diligence in conducting these reviews and making sure that the RHB has been informed of them and included in the actual site visits.

Earlier this year, RHB participated with the NRC in surveys and laboratory analyses of the levels of radiological contamination at facilities located at 703 South Main Street and 170 West Providencia Street, in Burbank. Based upon the findings from these efforts, the NRC considers both facilities to be contaminated above release limits established by current NRC policy.

In your letter you stated that the regulatory responsibility for ensuring that these sites are cleaned up to the currently acceptable levels lies with the State of California and RHB, under the terms of the Agreement between the NRC and the State of California. We do not agree with that conclusion.

It is our opinion that the regulatory responsibility and authority, if any, to force the cleanup of these sites rests with the NRC.

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In coming to our conclusion regarding which agency has regulatory responsibility for these sites, several factors were considered.

Both sites were authorized use locations on licenses issued by the AEC. Usage of radioactive materials at the 703 South Main Street ceased many years before the Agreement was effective. It is unclear how long there was work being conducted at the 170 West Providencia Street site, but it appears that the use of radioactive materials ceased prior to California becoming an Agreement State. Other information suggests that there may have been an effective AEC or NRC license (for special nuclear materials, perhaps) at that location even after California was an Agreement State.

We can find no evidence that either site was ever licensed by the State of California.

You correctly asserted that when California became an Agreement State on September 1, 1962, the Agreement gave the state certain rights and responsibilities with regard to byproduct, source, and small quantities of special nuclear materials. These rights and responsibilities are explicitly delineated in California Health and Safety Code section 115235. A careful review of the provisions of this statute discloses no requirement that California exercise regulatory authority over sites previously licensed by the AEC where those licenses were terminated by the AEC prior to California becoming an Agreement State. California acted in full faith and reliance that any sites released by the AEC met the release criteria in effect at that time. It should be noted that those criteria were essentially the same as those in present NRC policies and guidance.

Neither does the Agreement explicitly give California authority over sites released by the NRC after the Agreement became effective, for example, a special nuclear materials license or a reactor license.

It is our belief that the Agreement does not transfer regulatory authority or responsibility for regulatory oversight over sites in the state formerly released by the AEC or NRC, provided there is not a licensable quantity of radioactive material present.

As you are aware, at previously identified sites such as the Aerojet facility, there has been a responsible company in existence which eagerly stepped up to conduct the necessary surveys, evaluations, and cleanups even though the property was no longer owned/occupied by them. In those cases, RHB and NRC have worked together to ensure that appropriate efforts were undertaken and completed. These two sites in Burbank may pose an entirely different scenario in that there may not be such a company. Responsible parties may have to be determined, after possibly lengthy and expensive legal review of

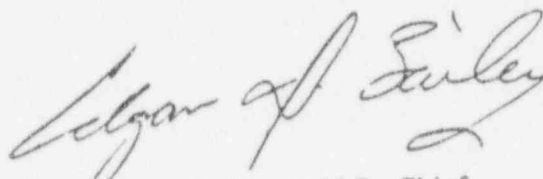
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the existing companies and the current owners, to determine which party or parties are legally and financially responsible for the cleanup of these sites. It is our opinion that such costs should be borne by the NRC since State of California appears to have had no part in creating the problem and was not informed until recently that such a problem existed.

We presume that after you have reconsidered the facts related to these two sites, you will agree with our conclusion regarding regulatory authority and responsibility. RHB stands ready to assist you in your efforts.

If you have any questions regarding our position and expectations, or want to discuss them, please let me know.

Sincerely,

A handwritten signature in cursive script, reading "Edgar D. Bailey". The signature is fluid and stylized, with the first and last names being more prominent.

Edgar D. Bailey, C.H.P., Chief