

April 3, 1989

ALL AGREEMENT AND NON-AGREEMENT STATES

UNAUTHORIZED DISTRIBUTION OF LIGHTNING RODS CONTAINING SOURCE MATERIAL

A number of States have learned of the distribution of lightning rods containing thorium. These devices have been distributed by a general licensee of New York, Heary Brothers. Our Offices of the General Counsel and Nuclear Materials Safety and Safeguards have reviewed this matter and concluded that (a) the distribution of lightning rods containing source material as a consumer product is not authorized by NRC, and (b) the distribution of a consumer product is not an activity contemplated as coming under a general license. Accordingly, we have requested New York to take appropriate steps to cease such distribution by the New York general licensee and to obtain a plan from the general licensee for recovery of the devices distributed to date.

Should the general licensee wish to do so, a petition for rulemaking can be filed with NRC to amend 10 CFR 40.13, "Unimportant quantities of source material" to include lightning rods containing source material.

We will keep you informed as developments warrant.

Original signed by Carlton Kammerer

Carlton Kammerer, Director
State, Local and Indian Tribe Programs
Office of Governmental and Public Affairs

Distribution:

SA RF
Dir RF
Lubenau
JAustin, NMSS
New York File

*See previous concurrence

CC :SLIYP:SA	:SLIYP:SA:AD	:SLIYP:DD	:SLIYP:D	:	:	:
ME :JLubenau:dd	:VMiller	:SSchwartz	:CKammerer	:	:	:
TE :3/20/89*	:3/20/89*	:3/21/89*	:4/3/89	:	:	:

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PDR FOIA PDR
BROASB9-182

ALLS



STATE OF NEW YORK
DEPARTMENT OF LABOR
Division of Safety and Health
ONE MAIN ST.
BROOKLYN, N.Y. 11201

RADIOLOGICAL HEALTH UNIT
(TEL.NO. -718- 797-7642)

VIA EXPRESS MAIL

April 13, 1989

✓
Heary Bros.
Lightning Protection Co., Inc.
11291 Moore Road
Springville, New York, 14141

Attn: Mr. Kenneth P. Heary
President

Dear Mr. Heary:

The U.S. Nuclear Regulatory Commission (NRC) has issued an interpretation regarding the distribution of thorium air terminal lightning preventors. NRC has stated that thorium air terminal lightning preventors are consumer products and must be distributed pursuant to an exemption such as, listed in Table 1 of Industrial Code Rule 38, and not pursuant to Item (d) of Table 3.

Based on this interpretation, the attached Order to Comply is issued requiring you to immediately cease distribution of thorium air terminal lightning preventors, and develop a recall Plan within 30 days for the thorium air terminal lightning preventors which you have distributed.

The NRC interpretation is attached.

Sincerely,

F. J. Bradley
Francis J. Bradley
Principal Radiophysicist

FJB:tp
Atts.

c/c: J. McGrath, U.S.N.R.C.
C. Hardin, CRCPI
All Agreement States

RT #5
A/16



STATE OF NEW YORK
DEPARTMENT OF LABOR
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ORDER TO COMPLY

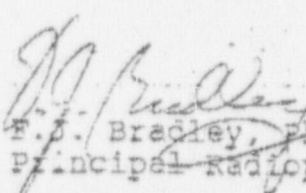
HEARY BROS.
LIGHTNING PROTECTION CO., INC.
11291 Moore Road
Springville, New York 14141

April 12, 1989

Based on the fact that Heary Bros. Lightning Protection Co. Inc., has distributed thorium air terminal lightning preventors to the general public as a consumer product in violation of the General License in Item (d), Table 3, Section 38.41 of Industrial Code, Rule 32, Heary Bros. Lightning Protection Co., Inc., is hereby ordered to:

- (1) Immediately cease distribution of thorium air terminal lightning preventors and,
- (2) Develop a recall Plan and submit it to Principal Radiophysicist for review and approval by May 10, 1989 for all thorium air terminal lightning preventors distributed by firm or affiliated firms.

FJB:tp


F.J. Bradley, Ph.D.
Principal Radiophysicist

FOR: COMMISSIONER OF LABOR