



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

November 3, 1999

Mr. William J. Sinclair, Director
Division of Radiation Control
Department of Environmental Quality
168 North 1950 West
P.O. Box 144850
Salt Lake City, Utah 84114-4850

Dear Mr. Sinclair:

This is in response to your September 28, 1999 e-mail message (enclosed) and your letter of October 22, 1999, regarding the disposal of 11e.(2) byproduct material into a low activity radioactive waste (LARW) disposal cell.

In our September 24, 1999 letter to you we stated that:

"The low-level waste disposal cell, licensed by the State of Utah, is covered by regulations compatible with 10 CFR Part 61. Specifically, 10 CFR 61.1(b) provides that uranium and thorium tailings and waste in quantities "greater than 10,000 kilograms containing more than five (5) millicuries of radium-226" would not be permitted for disposal."

Our statement regarding compatibility was premised on the fact that we believed Utah regulations contained a provision compatible with 10 CFR 61.1(b). Following discussion with you, we learned that Utah had eliminated this provision from its regulations effective February 2, 1993.

You have correctly noted that 10 CFR 61.1(b) is assigned a compatibility category D, which means that Agreement States do not need to adopt this particular requirement for purposes of compatibility. In view of the foregoing, the State of Utah has the flexibility to either adopt this requirement by rule or license condition, or to continue to exclude this provision from Utah rules. As we understand your regulations, the Utah definition of waste in R313-25-2 is compatible with the Part 61 definition. The modified purpose and scope section in the Utah regulations would appear not to allow the disposal of limited amounts of 11e.(2) byproduct material in a in a low-level radioactive waste disposal site as allowed in 10 CFR 61.1(b).

You requested an explanation on the origin of the 10 CFR Part 61.1(b) requirement. You also requested further clarification on NRC's opinion concerning the disposal of pre-1978 11e.(2) byproduct material into a LARW disposal cell.

The exemption in 10 CFR 61.1(b) allows specified amounts of uranium and thorium tailings to be transferred to a licensed LLRW facility for disposal as opposed to a tailings impoundment. This exemption was developed to provide waste disposal relief to laboratories and small pilot

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projects. Except as allowed under 10 CFR Part 61.1(b), material defined as 11e.(2) byproduct material in the Atomic Energy Act, may not be sent to a LLRW facility (or cell) for disposal. I hope this clarifies our position and apologize for any inconvenience created by our earlier letter.

Please contact me, should you have any further questions.

Sincerely,



Paul H. Lohaus, Director
Office of State Programs

Enclosure:
As stated