

43

RECORD #43

TITLE: Disposal of Exempt Quantities of Radioactive Material

FICHE: 67275-125

ROUTING AND TRANSMITTAL SLIP

Date 4-18-85

HP Positions

TO: (Name, office symbol, room number, building, Agency/Post)	Initials	Date
1. <u>Jay Cunningham</u>		
2. <u>✓ Bob Paulus</u>		
3. <u>Len Colob</u>		
4. <u>Jim Wigginton</u>		
5.		

Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

REMARKS

*Got this from Karen Cyr. It's the only NRC document I've found that explains why you can't invoice exempt quantities/concs. as authorizations for disposal. If you know of any similar documents, plse let me know.*

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)	Room No.—Bldg.
<u>John Buchanan</u>	Phone No.

5041-102

OPTIONAL FORM 41 (Rev. 7-76)  
 Prescribed by GSA  
 FPMR (41 CFR) 101-11.206



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION I  
631 PARK AVENUE  
KING OF PRUSSIA, PENNSYLVANIA 19406  
April 13, 1983

*John  
Buchanan*

MEMORANDUM FOR: James H. Joyner, Chief, NM&SB, DETP

FROM: Jay M. Gutierrez, Regional Counsel

SUBJECT: DISPOSAL OF EXEMPT QUANTITIES OF RADIOACTIVE MATERIAL

In your memorandum of March 22, 1983, you summarize a January 27, 1983 incident being considered for enforcement action wherein a licensee inadvertently disposed of one to two microcuries of tritium in a sanitary landfill. You state that while the staff has always maintained that no de minimus levels exist for land disposal of solid radioactive waste, this incident raises the question of whether a licensee should be cited for an act with so little public health and safety consequence. You suggest that certain regulations appear to authorize disposal of licensed material in individual quantities which do not exceed those listed in 10 CFR 30.71, Schedule B, by transfer to any recipient, including garbage collectors and sanitary landfills. Specifically, you state:

"10 CFR 20.301(a) states, in part, that no licensee shall dispose of licensed material except by transfer to an authorized recipient as provided in Part 30. 10 CFR 30.41(b)(3) permits any licensee to transfer byproduct material to any person exempt from the licensing requirements of the Act and the regulations in Part 30. Except as specified in 10 CFR 30.18(c) and (d), 10 CFR 30.18(a) exempts persons from the licensing requirements of the Act and the regulations in Parts 30-34 to the extent that such persons receive, possess, use, transfer, own, or acquire byproduct material in individual quantities each of which does not exceed the applicable quantity set forth in Section 30.71, Schedule B. For tritium the Schedule B quantity is 1000 microcuries. Commercial distribution is excepted from this exemption in paragraphs (c) and (d) of Section 30.18."

Under the facts being considered for enforcement, a janitor employed by a material licensee removed a five gallon drum containing one to two microcuries of tritium. The drum was subsequently sent to a landfill before the licensee discovered the loss. Since the exempt quantity for tritium is 1000 microcuries under 10 CFR 30.71, Schedule B, you suggest that the regulations appear to authorize disposal of this licensed material in individual quantities which do not exceed Schedule B limits.

Your suggested analysis does not clearly distinguish the scope and purpose behind Parts 20 and 30 of the regulations. Part 30, specifically 30.71, Schedule B, establishes quantities of potentially licensable material which are sufficiently small so as not to warrant licensing. In contrast to the threshold determination of what quantities should be licensed, Part 20 governs the waste disposal process for material determined to be licensable, regardless of the quantities being considered for disposal.

A general rule of statutory construction is that where two regulations are in apparent contradiction, the specific governs over the general. Thus, although 10 CFR 30.18(a) does authorize the receipt, possession, use, transfer,

James H. Joyner

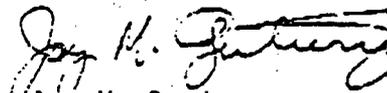
2

ownership or acquisition of potentially licensable material in quantities below that listed in 10 CFR 30.71, Schedule B; 10 CFR 20.301, et, seq., is the governing regulation for purposes of waste disposal. Indeed, 30.18 is silent with respect to a licensee's right to transfer material for purposes of disposal in quantities below Schedule B amounts.

In short, your analysis confuses the regulations governing exempt quantities for purposes of licensing under Part 30 with the rules governing disposal under Part 20 of small amounts of licensed material which, in themselves, would not be licensed under Part 30. Once a license is issued then the terms of that license and Part 20 govern with respect to waste disposal. Schedule B is irrelevant to that question, it rather goes to the issue of whether a quantity of a particular substance in the first instance should be licensed.

Neither Part 20 nor the terms of the material license in question would authorize disposal of one to two microcuries of tritium in a landfill. Specifically, although 10 CFR 20.303 and 306 permit the disposal of small quantities of tritium (hydrogen-3) by a means other than to an authorized recipient, neither regulation is applicable to the facts of this situation. Moreover, Condition 19 of License No. 29-19591-01 requires that licensed material be possessed and used in accordance with statements, representations, and procedures contained in an application dated September 18, 1980. Item 14 of this application requires that radioactive waste be disposed of by transfer to Nuclear Diagnostic Laboratories, Inc., a radioactive waste disposal service. Accordingly, on January 27, 1983, when the licensee inadvertently disposed of one to two microcuries of tritium they were in violation of both Condition 19 of their license and 10 CFR 20.301(a) of the regulations. From an enforcement perspective, the fact that the amount disposed would not itself be licensable is irrelevant.

This interpretation of the regulations has been formulated in consultation with ELD. Should you have any further questions regarding this matter please do not hesitate to contact me.



Jay M. Gutierrez  
Regional Counsel

cc: T. Martin  
J. Allan  
J. Glenn  
J. Kinneman  
L. Friedman  
R. Starostecki