

August 13, 2003

Mr. Edgar D. Bailey, P.E., CHP, Chief
Radiologic Health Branch
Division of Food, Drug and Radiation Safety
California Department of Health Services
P. O. Box 942732
Sacramento, CA 94234-7320

Dear Mr. Bailey:

I am responding to your April 14, 2003 letter requesting clarification on the regulatory status of glazed ceramic tiles containing up to 10 percent by weight source material.

Ceramic tiles were previously distributed under a broad exemption for ceramic products in 10 CFR 40.60 contained in the original Part 40 issued in 1947 (12 FR 1855, March 20, 1947). In some cases, ceramic tiles were distributed even prior to enactment of the original Part 40 or its statutory basis, the Atomic Energy Act of 1946. When an overall revision of Part 40 was completed in 1961 (26 FR 284; January 14, 1961), this broad exemption and one for glass products were eliminated and replaced with a more restrictive exemption in 10 CFR 40.13(c)(2), which, at that time, read: "Source material contained in the following products: (i) Glazed ceramic tableware, provided that the glaze contains not more than 20 percent source material; and (ii) glassware containing not more than 10 percent source material; but not including glass brick, pane glass, ceramic tile or other glass or ceramic used in construction." Subsequent revisions to 10 CFR 40.13(c)(2) did not change the restriction against use of ceramic tile or other ceramic in construction except to add the words, "commercially manufactured," when glass enamel and glass enamel frit was added to the same exemption in 1964. However, ceramic tiles distributed before the 1961 rule revision were considered to continue to be exempt from regulation. The Atomic Energy Commission (AEC) did not order the removal of these tiles from existing structures based on elimination of the exemption and materials subject to the exemption are not subject to disposal requirements. Neither AEC nor the Nuclear Regulatory Commission (NRC) has issued any special instructions for the handling of this material once it is removed from existing structures. (Note: 10 CFR 40.13(c)(2)(ii) was redesignated 10 CFR 40.13(c)(2)(iii) in 1970.) The regulation was further revised in 1984 to limit the exemption for glass enamel or glass enamel frit to that already distributed; the separate paragraph, 10 CFR 40.13(c)(2)(iv), was added at that time. (Distribution of these products was first suspended in 1983.)

You also asked whether the general license in 10 CFR 40.22 applies to these tiles, if the total amount of uranium (or thorium) in the total volume of the tiles did not exceed 15 pounds. The general license in 10 CFR 40.22 applies to small quantities of source material used for "research, development, educational, commercial or operational purposes." Tiles used in public and private buildings are not within the permitted uses of this general license. Consequently, we have reconsidered the previous staff views concerning the application of the general license in 10 CFR 40.22. Those views do not reflect the current NRC staff position. Likewise, current 10 CFR 40.13(c)(2)(iii) does not apply, since it excludes commercially manufactured ceramic

tile and other ceramic used in construction. As stated above, 10 CFR 40.13(c)(2)(iv) only exempts glass enamel or glass enamel frit distributed between 1964 and 1983.

As you consider this matter further, we would appreciate being informed if you believe that use of these tiles constitutes a public health or safety concern.

If you have any questions, please contact me or Lloyd Bolling at 301-415-2327 or by e-mail at LAB@NRC.GOV.

Sincerely,

/RA/

Paul H. Lohaus, Director
Office of State and Tribal Programs

Edgar D. Bailey

-2-

August 13, 2003

tile and other ceramic used in construction. As stated above, 10 CFR 40.13(c)(2)(iv) only exempts glass enamel or glass enamel frit distributed between 1964 and 1983.

As you consider this matter further, we would appreciate being informed if you believe that use of these tiles constitutes a public health or safety concern.

If you have any questions, please contact me or Lloyd Bolling at 301-415-2327 or by e-mail at LAB@NRC.GOV.

Sincerely,

/RA/

Paul H. Lohaus, Director
Office of State and Tribal Programs

Distribution:

DIR RF (3-109)

DCD (SP08) PDR (YES)

DSollenberger

BUsilton

OSiurano-Perez

JWhitten, RIV

Response to Incoming Document: ML031140380

California File

DOCUMENT NAME: C:\ORPCheckout\FileNET\ML032250610.wpd

***See previous concurrence.**

To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" = No copy

OFFICE	STP	C	STP:DD	C	IMNS:D	C	OGC	C	STP:D	
NAME	LBolling:gd:kk		JMPiccone		CLMiller		JLieberman f/STreby* STreby**		PHLohaus	
DATE	7/24/03*		7/24/03*		8/11/03*		07/29/03* 08/12/03**		8/13/03	

OFFICIAL RECORD COPY