

September 5, 2006

Lisa P. Jackson, Commissioner  
State of New Jersey  
Department of Environmental Protection  
P.O. Box 402  
Trenton, NJ 08625-0402

Dear Commissioner Jackson:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter of June 27, 2006, which references the Commonwealth of Pennsylvania's Department of Environmental Protection (PADEP) findings concerning their State's leachate monitoring program. PADEP's leachate findings were discussed in a May 15, 2006 letter to the NRC. In view of these findings, and as a result of New Jersey's experience with tritium incidents, you provided four recommendations for the NRC to consider.

The NRC believes that it is important for distributors and general licensees to be aware of their responsibilities when distributing and possessing radioactive material. We believe that our regulatory and inspection programs accomplish this objective. Your first recommendation suggests that regulators look into the possible misuse of 10 CFR 31.5(c)(9)(ii), which permits transfers of devices between general licensees if the device is held in storage by an intermediate person in the original shipping container at its intended location of use prior to initial use by a general licensee. You state that some electrical distributors may be overstepping NRC regulation by becoming warehouses and redistributors of exit signs without a specific license for such activity. We would be interested in any specific examples of possible misuse of 10 CFR 31.5(c)(9)(ii) so that the NRC or an affected Agreement State may pursue this matter further.

The second recommendation suggests that sales literature should be required to clearly state that the devices contain radioactive material and the purchaser is a general licensee with rights and responsibilities. In 10 CFR 32.51a(a), the NRC's regulations require each specific licensee who transfers a device to provide the following information to the general licensee receiving the device: (1) a copy of the relevant portions of the general license contained in § 31.5; (2) copies of §§ 31.2, 30.51, 20.2201, and 20.2202; (3) a list of services that can only be performed by a specific licensee; (4) information on acceptable disposal options for the device and the estimated cost for disposal; and (5) an indication that NRC's policy is to issue high civil enforcement penalties for improper disposal of devices. Further, § 32.51a(a) requires the specific licensee to provide this information before the device is transferred. While § 32.51a(a) does not necessarily apply to sales literature, the NRC believes that this section of its existing regulations clearly requires specific licensees to make purchasers aware of their obligations as general licensees prior to transferring devices to those purchasers.

The third recommendation is to require that, prior to shipping a device to a general licensee, a specific licensee should obtain from a customer a signed statement that acknowledges they received copies of the regulations and are aware of the rights and responsibilities of a general licensee. NRC regulations, under 10 CFR 31.5(c)(12), require that a general licensee, "...shall appoint an individual responsible for having knowledge of the appropriate regulations and requirements and the authority for taking required actions to comply with appropriate regulations and requirements. The general licensee, through this individual, shall ensure the day-to-day compliance with appropriate regulations and requirements. This appointment does not relieve the general licensee of any of its responsibility in this regard." While not requiring a written acknowledgment with each transfer, § 31.5(c)(12) requires that each general licensee to have knowledge of the appropriate regulations, through appointment of a responsible individual who has the authority to ensure compliance. Therefore, the NRC believes that § 31.5(c)(12), coupled with the requirements in § 32.51a(a) discussed above, addresses your concern that general licensees be made aware of their regulatory responsibilities prior to receiving generally licensed devices.

Finally, you recommend that there should be a limit on the number of devices one could possess under the general license provisions before requiring a specific license to possess the devices. The NRC is in the process of revising its regulations and has planned a rulemaking that would change certain general license requirements. I invite you to comment on this rulemaking when it is published in the *Federal Register*.

Thank you for your interest in these matters, and I trust you find this letter responsive to your concerns.

Sincerely,

/RA/

Jack R. Strosnider, Director  
Office of Nuclear Material Safety  
and Safeguards

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This correspondence addresses policy issues previously resolved by the Commission, transmits factual information, or restates Commission policy.

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