



State of Utah

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DIVISION OF WASTE MANAGEMENT
AND RADIATION CONTROL
Scott T. Anderson
Director

September 19, 2016

John Tappert, Director
Division of Decommissioning, Uranium Recovery and Waste Programs
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Mail Stop T8 F5
Washington, DC 20555-0001

RE: Request for NRC guidance with respect to licensing and control requirements for conveyances that are used exclusively for transporting Class 7 (radioactive materials)

Dear Mr. Tappert:

The Division of Waste Management and Radiation Control hereby requests NRC's guidance regarding the changes made by the U.S. Department of Transportation (USDOT) to 49 CFR 173.443(c) that were finalized in 79 Fed. Reg. 40617 and became effective on July 13, 2015. Specifically, the Division would like to know what regulatory controls apply to conveyances that meet USDOT's "exclusive use" standards for conveyances in transit and for those in storage.

Prior to the regulatory changes, conveyances that were used to transport Class 7 Radioactive Material were treated as uncontaminated and were released from USDOT controls following payload removal if dose rates and contamination levels on accessible surfaces did not exceed 0.005 mSv/hr (0.5 mrem/hr) and 49 CFR 173.443(a) Table 9 contamination limits. Although NRC did not have corresponding regulations, these conveyances were also treated as no longer subject to NRC controls.

After the regulatory changes, conveyances that meet the same standards are now subject to a USDOT "exclusive use" requirement; the conveyances are to be used only for transport of Class 7 Radioactive Materials. The new requirement appears to reflect the reality that some quantity of radioactive material remains in the conveyance after it has been decontaminated to the level described above. Because there is no de minimus regulated quantity of radioactive material (see August 18, 1993 news release, "NRC Withdraws Below Regulatory Concern Policy Statements"), it would be reasonable to assume that licensure requirements apply. However, that result would be impractical and burdensome in many situations. The Division is requesting your assistance in determining what, if any, controls apply to these conveyances.

(Over)

DRC-2016-009202

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We have the following specific questions:

1. **Can conveyances released by USDOT for "exclusive use" be stored on land that is not subject to a land disposal or radioactive materials license?**

In the past, Utah's Department of Environmental Quality has assumed that it would be acceptable to move trucks and rail cars that meet standards for USDOT release to property adjacent to a licensed facility but not within the licensed area. Because we can no longer assume that a conveyance released for USDOT purposes is also released for NRC purposes, do we now have to assume that a conveyance that meets the standards in 49 CFR § 173.443(c) will nevertheless have radioactive contamination levels that must be controlled as "radioactive material" and be stored on licensed property? If so, and if the conveyance is moved away from a licensed facility and stored elsewhere, e.g., in a rail yard, would that property also have to be licensed?

2. **Is a manifest required for the transport of conveyances released for USDOT "exclusive use"?**

When asked whether release of a conveyance for exclusive use would require manifesting, the USDOT did not answer directly, but referred to the "exclusive use requirements in § 173.403, the definition section (see 79 Fed. Reg. 40601, third column). That is presumably a reference to the definition of "exclusive use,"¹ which does not reference manifest requirements. USDOT, then, is declining to answer the question. In light of that, the Division would like to know whether NRC believes that 10 CFR Part 20, App. G requires manifests for emptied conveyances that have been cleared for USDOT Exclusive Use.

3. **What physical and administrative controls should be placed on the conveyances while in transit between consignee and consignor or in storage?**

USDOT requires the initial carrier to provide "written instructions for maintenance of exclusive use shipment controls . . . and include these instructions with the shipping paper information . . ." as described in the definition of "Exclusive Use" as quoted above. Are there additional controls imposed by NRC? A copy of the written instructions prepared by one of our licensees is included as Attachment A for your reference.

We previously asked (informally by telephone and email) Mr. David Pstrak, Senior Project Manager, Division of Spent Fuel Management, Office of Nuclear Material Safety and Safeguards, NRC to look into similar concerns. He has been investigating this concern but has not been able to provide a response.

¹ Exclusive use means sole use by a single consignor of a conveyance for which all initial, intermediate, and final loading and unloading and shipment are carried out in accordance with the direction of the consignor or consignee where required by this subchapter. The consignor and the carrier must ensure that any loading or unloading is performed by personnel having radiological training and resources appropriate for safe handling of the consignment. The consignor must provide to the initial carrier specific written instructions for maintenance of exclusive use shipment controls, including the vehicle survey requirement of §173.443(c) as applicable, and include these instructions with the shipping paper information provided to the carrier by the consignor.

The Division appreciates any guidance and insight from your staff regarding these questions. If you have any questions, please call Boyd Imai at (801) 536-0038.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott T. Anderson', written over a horizontal line.

Scott T. Anderson, Director
Division of Waste Management and Radiation Control

STA/BMI/jr

c: David Pstrak, Nuclear Regulatory Commission

Attachment A

EnergySolutions

SHIPMENT ID#

SHIPPER INSTRUCTIONS TO CARRIER

In accordance with the requirements of 49 CFR 173.443(c) and 10 CFR 71.5(b), this conveyance and / or package has been surveyed and may only be used for the transportation of radioactive material (Exclusive Use). Subsequent transport of any radioactive material must comply with DOT requirements. This conveyance and / or package may be released from these Exclusive Use instructions by applicable requirements of the U.S. NRC (or Agreement State) Radioactive Material License or appropriate regulatory agency.

CONVEYANCE ID#

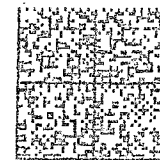


The State of Utah

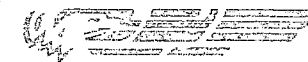
DEPARTMENT OF
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DIVISION OF WASTE MANAGEMENT
AND RADIATION CONTROL
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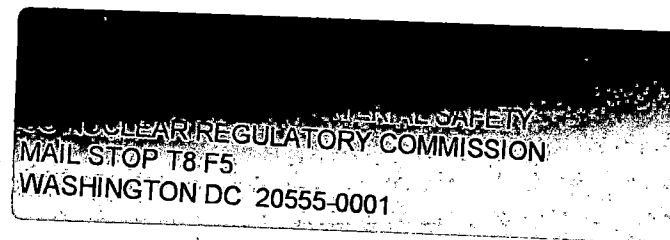
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