



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

November 8, 1996

MEMORANDUM TO: Josephine Piccone, Chief  
Operation Branch

FROM: Larry Camper, Chief  
Medical, Academic, & Commercial  
Use Safety Branch *[Signature]*

SUBJECT: TECHNICAL ASSISTANCE REQUEST:  
Items # 4 and 5a, b, and c of Regional Technical Assistance  
Request dated September 6, 1996

As discussed, below are the responses to items # 4 and 5 of the TAR from Region III dated September 6, 1996.

**Item # 4 - Regional Recommendation:**

Perform a review of the shelf-life of sealed sources and determine if a shelf-life requirement should be imposed.

**NMSS/IMNS Response:**

The determination of a shelf-life for sealed sources is a complicated issue that would require consideration of a number of conditions, including source construction, use, and storage. Use and storage conditions often vary extensively from user to user. For this reason, the actual shelf-life of a particular source model would vary according to its use and storage history. Variations in these conditions would make the determination of a representative shelf-life requirement that could be applied generically for all conditions very difficult. In addition, a study of this type would be resource and cost intensive. IMNS does not currently have sufficient resources or funding to perform a study of this type that would be meaningful, and does not plan to conduct such a study at this time. However, an alternative to a shelf-life determination that could provide the desired results is the limiting of storage conditions to those that would not have a detrimental effect on the source. This method has been applied in the past with success and would be much simpler to implement. In addition, this approach would not be resource intensive as the demonstration of acceptable storage conditions would be provided by either the manufacturer or user of the source or storage container.

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**Item # 5 Regional Recommendation:**

To address sealed source disposal the NRC should:

- a. Establish in NMSS a fund that can be used to pay for the transportation and disposal of abandoned sources.
- b. Develop a national sealed source depository that will accept all sealed Sources at little cost to the holder to encourage the removal from the public domain of useless or unneeded radioactive sources.
- c. Establish a policy and funding that allows NRC to take control of abandoned facilities, rather than EPA, when only minor contamination is identified.

**NMSS/IMNS Response:**

We continue to support the recommendations made to the Commission by IMNS that contractors not be used for retrieval or disposal of radioactive material (See attached memorandum dated April 4, 1996, and its attachments dated December 2, 1994). Numerous policy and legal issues arise in trying to develop a plan to initiate and implement a NRC contract for retrieval and disposal of radioactive material (i.e. conflict of interest, appropriations, etc.).

If you have any questions or need additional clarification with this situation, please contact Mr. Chris Brown at (301) 415-5787.

Attachments: As stated

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UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

April 4, 1996

MEMORANDUM TO: John P. Potter, Chief  
Licensing and  
Inspection Branch 2  
Region II

FROM: Donald A. Cool, Director  
Division of Industrial and  
Medical Nuclear Safety  
Office of Nuclear Materials Safety  
and Safeguards

SUBJECT: TECHNICAL ASSISTANCE REQUEST:  
FORMER BENAFUELS, INC.  
CONTROL NO. - N/A  
LICENSE NO. - N/A

This is in response to your Technical Assistance Request (TAR) dated February 26, 1996, requesting assistance with an un-licensed gauge located at Urps Iron and Metal, Co., in Davy, WV. The question as to whether to use Nuclear Regulatory Commission contractors for the retrieval and disposal of seized material was raised by Commissioner de Planque in late 1994. Staff response to this issue included a recommendation to not use contractors in this capacity (see attached response dated December 2, 1994). We continue to support this position, and recommend you not proceed with the proposed action to hire a contractor to recover and dispose of the gauge. In addition, we agree that the situation does not fit within the criteria for requesting assistance from the U.S. Department of Energy as disposal options remain available and the situation has not been characterized as an imminent threat to the public health and safety, nor does it fit the criteria for the Environmental Protection Agency to take action as the Lead Federal Agency (LFA) for the Federal response under the draft Federal Radiological Emergency Response Plan as the material has been traced to a former licensee.

As Urps Iron and Metal Company purchased, and accepted, the gauge as metal scrap, and did not reject the shipment upon receipt, the responsibility for its disposition falls on Urps. Therefore, every effort should be made, up to and including issuing an Order, to have Urps return the gauge to Ronan Engineering Company, or other authorized recipient, for disposal. In addition, Region II should assist Urps, as necessary and appropriate, with the disposal of the gauge. Ronan has offered to accept the gauge for disposal and may be willing to mitigate the cost of the return, given that Urps is an un-licensed possessor of the material and has indicated an inability to pay for the transfer. The TAR also indicated that Urps may return the gauge to the scrap peddler from whom it was received. The regional inspection staff should ensure the gauge is secured, such that further loss, transfer, and/or exposure to members of the general public is prevented, until such time as the gauge is transferred to Ronan, or other authorized recipient.

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J. Potter

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It should be noted that the Department of Transportation exemption that allows the refusal and return of radioactive material in shipments of scrap requires the entire shipment of material be rejected upon identification of the radioactive material. This exemption is administered by the applicable State Department of Transportation following a request submitted by the person receiving the material. The regional staff should contact the State to ensure an exemption is not issued in this case so that the gauge will not be transferred to another un-licensed party.

If you have any questions or need additional assistance with this situation, please contact me at (301) 415-7197 or Mr. Douglas Broaddus at (301) 415-5847.

Attachment: As stated

Distribution:

SSSS r/f

SSSS Staff

NE02-SSD-3

IMNS # 5274

OMasnyk Bailey

DOCUMENT NAME: H:\DOCUMENT\R11\_DOE.TAR

\* see previous concurrence

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UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20545-0001

December 2, 1994

MEMORANDUM TO: Commissioner de Planque

FROM: James M. Taylor  
Executive Director for Operations

SUBJECT: SECY-94-266: PROPOSED ENFORCEMENT ACTIONS AGAINST  
PERSONS POSSESSING NRC-LICENSED MATERIALS WITHOUT  
AUTHORIZATION

In response to Commissioner de Planque's November 15, 1994 questions during the ongoing consideration of issuing daily civil penalties for possession of radioactive materials without a valid license, the staff provides the following information:

## Question 1:

Staff indicates that where persons no longer authorized to possess radioactive materials continue to possess those materials, "there is not an imminent health and safety concern assuming such persons maintain the NRC-licensed material in locked storage" (p.2, emphasis added). It is not clear why given the failure of a licensee to comply with requirements for a license or a failure to comply with other requirements that lead to revocation of a license, the NRC should make any assumptions regarding the licensee's willingness or ability to comply with requirements for locked storage of licensed material or other safety requirements that are applicable while material is in storage. Does NRC have an adequate basis for making the assumption that locked storage requirements will be observed?

## Answer:

The staff did not intend to make any assumption as to whether or not locked storage requirements will be observed. The statements quoted above are part of SECY-94-266's description of a particular type of case where the staff believes that regulatory action is needed. Specifically, SECY-94-266 is aimed at cases where (1) the underlying reason for license termination, suspension or revocation is essentially financial (e.g., licensees that choose not to renew; license revocations for non-payment of fees); and (2) the licensee or former licensee has not transferred the radioactive material (even though such option exists) often times because they do not want to spend the necessary funds. In such cases, the staff believes additional civil penalties could provide the impetus for licensees and former licensees to comply with NRC requirements or orders to transfer the material. Given that protection of public health and safety depends in part on the locked storage of the radioactive materials, the staff believes that transfer of the materials is preferable to allowing them to stay on site; over

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Commissioner de Planque

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time materials in storage which are not economically usable can be lost or improperly disposed of or transferred.

Question 2.

Would it not be more prudent for NRC to enter contractual arrangements with a licensee authorized to possess and/or dispose of radioactive materials (or with DOE, if appropriate) whereby the staff would have the option of ordering the immediate seizure of the radioactive materials, thereby avoiding prolonged possession of licensed material by a licensee already in substantial noncompliance with NRC requirements? This practice would also avoid the risks attendant upon improper disposal. Civil penalties could still be imposed for the unauthorized possession of the materials.

Answer:

The issue of which course of action is more prudent is a complicated question with both legal and policy considerations. In the staff's view, the licensee is responsible for the proper transfer or disposal of licensed radioactive materials. It is for that reason that the staff chose to propose civil penalties with the potential to impose daily civil penalties in order to make noncompliance more expensive than compliance. In those cases where licensees are financially unable to transfer the materials, the staff is considering a number of options. The primary option would be to request DOE assistance in picking up material which poses a health and safety risk or concern. The staff has drafted and is in the final steps of issuing an Inspection Procedure and a Policy and Guidance Directive to implement this option. A second, but less attractive option in the staff's view is the contractor option. Major policy and legal issues arise in developing a plan to implement an NRC contract for retrieval of materials. These issues include who has the authority or how can the authority be conveyed to a contractor to seize such property; how can a contractor obtain indemnification associated with seizure; and how is the title or ownership of radioactive materials transferred. In addition, there are associated implications that NRC will take responsibility for transfer and disposal of radioactive materials when any license expires.

Question 3:

If the above-described practice were to be adopted, could the NRC recover the actual costs of transfer and/or disposal from the licensee?

Answer:

The actual costs could be assessed but whether the claim would take precedence over other claims on the former licensee's assets presents a more difficult legal issue. In addition it is not clear whether the payment to the NRC would go to the U.S. Treasury or be usable by NRC to offset costs. This issue is being reviewed by OGC as part of the contract option. In a prior enforcement action against Dr. Fisher, the

Commissioner de Planque

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staff proposed (SECY-93-248) and the Commission approved (September 21, 1993 SRM) the issuance of a civil penalty in excess of the costs incurred by the DOE for removal of a 500 curie cobalt-60 source. In this case, the licensee paid a civil penalty in excess of the costs incurred by DOE to remove the NRC-licensed material.

In an attempt to balance limiting NRC involvement in removing or becoming responsible for clean-up of a licensee's or a former licensee's NRC-licensed activities with ensuring that the costs do not become transferred to other NRC licensees, NMSS is considering various options regarding the feasibility of contractual arrangements to accept and store radioactive materials when licensees or former licensees do not comply with requirements. The issues regarding the above contract proposal are difficult and are currently being reviewed by OGC and NMSS. In any event, the contract option is not the staff's first choice, even if it is feasible, to address this issue. The staff believes that strong enforcement sanctions will provide licensees with the incentive to comply with requirements to transfer and properly dispose of materials. Therefore, the staff requests that the proposal for daily civil penalties be separated from the contract issue and that the staff be given approval to issue daily civil penalties as described in SECY-94-266.

cc:

The Chairman

Commissioner Rogers

OGC

SECY

DEC 22 '94 12:37 EDO

Commissioner de Planque

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REGIONAL TECHNICAL ASSISTANCE REQUEST FORM

Date: February 26, 1996

Mail or E-Mail to: Donald A. Cool, (DAC) Director, Division of Industrial and Medical Nuclear Safety, NMSS, Mail Stop 8F5-TWFFN, If E-mail, cc: CLE (DAC)

From: John P. Potter (JPP), Chief Licensing and Inspection Branch 2, Region II  
Division of Nuclear Materials Safety and Safeguards

Licensee: Former Benafuels, Inc. McComas, WV, [Bankruptcy, 1989]

License No.: General License (10 CFR 31.5)

- ☐ Control No. N/A  
☐ Letter dated: N/A  
☐ Suggested change in licensing procedure: N/A

☐ Problem/Issue: Gauge inadvertently came into the possession of a non-licensee and must be disposed of. 500 mCi Cs-137 gauge was abandoned, sold twice, detected by scrap monitor, and returned to Urps Iron and Metal Co., Davy, WV. Estimated cost to return to Ronan Engr Co. vendor, \$2,000 - \$5,000. Possessor unwittingly bought gauge from scrap peddler and may return to scrap peddler. Benafuels, Inc. bankruptcy trustee claims insufficient funds for disposal, and superior liens on the funds that remain.

☐ Action Required: Develop a policy on disposal of abandoned material, not clearly within the scope of P & GD 9-12 or the Federal Radiological Emergency Response Plan.

Recommended Action: ☐ Approve or ☐ Reject

That NRC hire a contractor to dispose of this category of radwaste and attempt to recover the cost from the original material holder who abandoned it. Continued unwilling possession by a non-licensee poses a potential public threat unless we Order him to obtain a license for material he unwittingly purchased, and may again abandon. Regional Counsel, after consulting with the Deputy Assistant General Counsel for Enforcement, concurs that the original license holder (Benafuels, Inc) can be held accountable, and that the individual in current possession of the gauge cannot be compelled to spend money to dispose of the gauge. However, since it is unlikely that the disposal costs can be fully recovered from Benafuels, Inc., the NRC should seize the material to prevent potential harm.

Remarks: See attached.

Headquarters Reviewer: \_\_\_\_\_

Regional Reviewer: Orysia Masnyk Bailey, Inspector

Inspector Phone No.: (404) 331-2687 FAX No.: (404) 331-5559

TAR Reply Requested by: April, 1996

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Form TAR-10

**Remarks:**

Roan Engineering Company model X90-SA-8 Point Level Gauge ( Serial No. 75691) containing approximately 500 millicuries of Cesium 137 was sold to Benafuels, Inc., McComas WV, in February 1985 as a generally licensed device.

In 1989, Benafuels went bankrupt. Discussions between the RII Materials Licensing/Inspection Branch 1 Chief and Rod Satterfield and Elizabeth Pruitt of the First National Bank of Bluefield West Virginia (304) 325-8181, disclosed the following. The land and equipment at Benafuels were security for bonds issued at the time the company was organized. First National Bank of Bluefield, WV, was the trustee for the bonds. First National sold the assets of Benafuels at public auction in 1989. Benafuels' equipment was purchased by Richard Perservati (304) 325-8195. Apparently, the equipment was removed from the site by several scrap dealers, one of whom sold the gauge to Urps Iron and Metal Co., Davy, WV.

On March 24, 1995, John Lingerfield (703) 326-3466, a former Vice President at Benafuels called the Materials Licensing/Inspection Branch 1 Chief and told him, (at the request of Mr. Urps), that at the time of bankruptcy, Benafuels was attempting to sell the gauge to Georgia Pacific (a holder of a specific license), but the sale did not go through. He had packaged and labeled the box as specified by Roan. The gauge (the only one owned by Benafuels), was still onsite when he left the company.

Urps Iron and Metal Co. purchased the gauge from a scrap dealer and subsequently sold it to Steel of West Virginia. On March 13, 1995, Steel of West Virginia notified Region II that a shipment of scrap from Urps had set off radiation monitors. Fortunately, the gauge was not smelted. Radiation levels on the exterior of the truck were 2.5 mr/hour. Radiation levels on contact with the gauge as measured by Urps were approximately 40 mr/hour. The gauge was returned to Urps.

A Region II Materials inspector went to the Urps Iron and Metal Company on April 20, 1995. The gauge was stored in a barrel inside a locked fenced area. The inspector provided Radiation Material postings and took measurements, which were less than 2 mr/hour at the barrel surface. The inspector contacted the Roan company and was advised that they use a contractor to recover the gauges and that the minimum cost for this was \$1,200, but that costs could go up to \$5,000. Additionally, the gauge would have to be packaged and shipped. Mr. Urps stated that he could not afford to absorb this cost.

Discussion with Doug Broaddus with the Source Containment and Devices Branch disclosed their position that EPA should take responsibility for the gauge. However, the Federal Radiological Emergency Response Plan states that " The EPA is the LFA (Lead Federal Agency) for an emergency that involves radioactive material from a foreign or unknown source that has actual, potential, or perceived radiological consequences". This material is from a known source. Policy and Guidance Directive 9-12, Reviewing Efforts To Dispose of Licensed Material and Requesting U.S. Department of Energy Assistance, dated August 1, 1995 deals with a licensee seeking to divest themselves of material. DOE may be called to take possession of radioactive material in situations involving a defined radiological emergency or that have a high potential to cause a threat to the public health and safety.

It appears that this case does not fit into either category. The material is secured, albeit by an unauthorized individual. The individual came by the source by accident. Since he is an unwitting and unwilling possessor we may not be able to compel him to act in this matter, and he is anxious to divest himself of the gauge. To prevent smelting or dumping, the NRC should hire a contractor to remove the gauge from Urps and attempt cost recovery from the former officers of Benafuels.

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TAJ: Reply Requested by: April, 1996

Form TAR- 10

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