



The Dow Chemical Company
Midland, Michigan 48674

2030 DOW CENTER
January 17, 1997

CERTIFIED MAIL--RETURN RECEIPT
REQUESTED

U.S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, DC 20555

Re: Response of The Dow Chemical Company to the Review of Two
Contested Violations From November 7, 1996 Notice of
Violation (Review)
Docket No. 030-04783
License No. 21-00265-06

Dear Sirs:

This will respond to your review of the referenced contested violations which was dated December 20, 1996 (Review). Dow acknowledges the Commission's review of the second alleged violation and the withdrawal of that allegation. As to the first alleged violation, Dow offers the following information:

The Review states that the Commission investigated Dow's initial response and found that at the time of the transfer, Dow possessed a copy of the transferee's license and a photocopy of an excerpt of 10 CFR 35.57. However, this fails to recognize that Dow also had in its possession a document signed by the Radiation Safety Officer for the transferee which stated explicitly that the transferee was authorized to receive the source. Inasmuch as the Commission's regulations (as referenced in Dow's initial response) require only that Dow have such a certification from the prospective transferee, Dow is not required to interpret another licensee's license. A copy of this additional document was inspected by the Commission's inspector during the initial on-site inspection; the document was referenced in Dow's initial response to the Notice of Violation; and the document was reviewed again in the investigation conducted by the Commission upon receipt of Dow's initial response. A copy is now attached to this response.

Further, the Review erroneously interprets the requirements of 10 CFR 35.57(a). The Review seems to imply that Dow was engaged in the manufacture and/or distribution of sealed sources for use in calibration under 10 CFR 35. This is not correct. The transfer of the source in question to Mid-Michigan Regional Medical Center would not be considered "manufacturing" or "distribution in commerce" of the source. Thus, these provisions are irrelevant to the transfer. In fact, the source in question was manufactured and distributed

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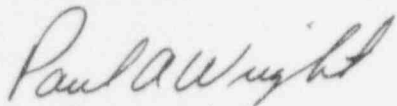
by a properly licensed manufacturer at the time it was originally transferred to Dow. That initial transaction is the only transaction in which 10 CFR 35.57(a) would be relevant.

Thus, Dow continues to believe firmly that no violation of its license occurred as a result of the transfer of the source in question. Dow, however, does not want such questions raised in the future. Thus, Dow has reviewed the benefit of transferring such sources to entities such as the Mid-Michigan Regional Medical Center and has concluded that the contribution to the community which results from such benevolent transfers is not worth the effort which Dow must invest into an investigation such as this. Therefore, Dow has determined that no sealed sources to be used for calibration purposes in medical uses will be transferred to any such entities in the future. Dow will otherwise dispose of these sources. The Radiation Safety Program at Dow will be modified to reflect this decision.

In conclusion, then, Dow continues to believe that neither the first nor the second alleged violation was in fact a violation. However, Dow will modify its Radiation Safety Program to reflect a decision not to make future transfers such as the transfer in question in the first alleged violation.

If you have any questions regarding this response, please contact the undersigned.

Sincerely,



Paul A. Wright
Counsel
Legal Department
517/636-1853

cc: Regional Administrator
United States Nuclear Regulatory Commission
Region III
801 Warrenville Road
Lisle, Illinois 60532-4351

David T. Buzzelli, Dow, VP E&HS
Janet Grappin, Dow, RSO

attachment: (Facsimile from MMRMC RSO)

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**MIDMICHIGAN
REGIONAL MEDICAL CENTER**

FAX COVER SHEET

NUMBER OF PAGES (including this cover sheet):

2

DELIVER TO:

JANET A. GRAPPIN

RADIATION SAFETY OFFICER

FROM:

LARRY LANGRILL, RSO

MIDMICHIGAN REGIONAL MEDICAL CENTER

OUR FAX NO.: (517) - 839-1347

MY PHONE NO.: (517) - 839-3450

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Message:

H-3 + Sr90

LICENSING FOR 1 SOURCE S

RE:

AUTHORIZATION FOR UP TO 15 milli Curies
PER CHECK SOURCE IS IN 10 CFR 35.57a.

UNLESS THE URANIUM CAN BE CONSIDERED
A CHECK SOURCE OF THIS MAGNITUDE, I GUESS
IT DOESN'T QUALIFY.

THANKS, Larry L.

If document is not received in its entirety, please call:

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