

February 6, 1997

David Bezzelli, Vice President  
Health and Environmental Safety  
Dow Chemical Company  
H&ES, Industrial Hygiene Laboratory  
1803 Building  
Midland, MI 48674

SUBJECT: RESPONSE TO DOW CHEMICAL LETTER DATED JANUARY 17, 1997

Dear Mr. Bezzelli:

This will acknowledge receipt of your letter dated January 17, 1997, signed by Mr. Paul A. Wright, Senior Attorney, Legal Department. Your letter responded to our review of two violations you contested in a letter dated December 2, 1996. The violations were transmitted to you in a Notice of Violation dated November 7, 1996. Our review, communicated in our letter dated December 20, 1996, resulted in the withdrawal of one violation. During our review, however, we determined that the violation cited regarding unauthorized transfer of byproduct material remained valid. Your January 17, 1997 letter addressed Dow Chemical's continued disagreement with our determination that Violation No.1 of our letter dated November 7, 1996, stands as stated.

Regardless of whether Dow Chemical received certification from the transferee that possession was authorized, MidMichigan Regional Medical Center was not authorized to receive the sources in question. Therefore, Dow Chemical was in violation of 10 CFR 30.41 (a) and (b)(5) on May 6, 1996, when the transfer occurred. If you choose to transfer byproduct material in the future, please be aware that it is your responsibility to ensure that any person receiving byproduct material from Dow Chemical is authorized to possess it.

We have determined that Violation No.1 of our letter dated November 7, 1996, remains valid. We have reviewed your corrective actions in your letter dated January 17, 1997, which appear to be adequate, and we have no further questions at this time. We consider this matter closed.

Sincerely,

*Original Signed by Roy J. Caniano*

Cynthia D. Pederson, Director  
Division of Nuclear Materials Safety

License No.: 21-00265-06  
Docket No.: 030-04783

Enclosure: Letter dtd. January 17, 1997

cc w/o encl: Paul A. Wright, Esq.  
bcc w/encl: H. Clayton, EICS  
PUBLIC

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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

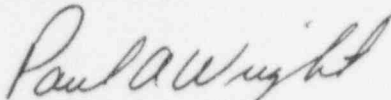
by a properly licensed manufacturer at the time it was originally transferred to Dow. That initial transaction is the only transaction in which 10 CFR 35.57(a) would be relevant.

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)

4005 Orchard Drive

Midland, Michigan 48670

517 • 839 • 3900

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-3-5r90

RE:

LICENSING FOR A SOURCE S

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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