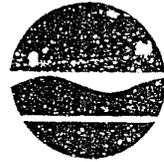


109141

141951

New York State Department of Environmental Conservation
Division of Solid & Hazardous Materials
Bureau of Pesticides & Radiation
50 Wolf Road, Albany, New York 12233-7255
518-457-2225 FAX 518-485-8390



Commissioner

May 7 3 02 PM '96

April 26, 1996

██████████
Permit Coordinator
Browning-Ferris Gas Services, Inc.
757 N. Eldridge (77079)
P.O. Box 3151
Houston, Texas 77253

Dear ██████████

Re: BFI Niagara Landfill Gas Extraction System
Seaway Industrial Park
River Road, Town of Tonawanda
Erie County, New York

On February 29, 1996, I wrote to the US Nuclear Regulatory Commission (NRC) seeking the NRC's confirmation of the status of New York State's authority to license by-product material as defined in section 11.e.(2) of the federal Atomic Energy Act. You received a copy of my letter. Enclosed is a copy of the NRC's April 23, 1996 reply, which confirms our previous understanding that New York State's agreement with the NRC does not give New York State regulatory authority over Section 11.e.(2) material.

The FUSRAP material in the Niagara Landfill is 11.e.(2) material and is a potential source of radon emissions from the gas extraction system. The other (and we believe, predominant) source of radon in the landfill gas is naturally occurring radium in the solid waste and the soil in and under the landfill. This Department does not regulate the naturally occurring radon, and based on the NRC's April 23, 1996 letter, we will not regulate any radon-222 released from the Section 11.e.(2) material.

Therefore, regardless of the concentration of radon in the gas, BFI is not required to obtain a permit under 6 NYCRR Part 380 for the release of the landfill gas to the atmosphere. This applies to the passive system now operating, the blower and flare that this Department has already approved, and the proposed co-generation plant.

19951

Page 2

I suggest you contact the NRC regarding any regulatory requirements the NRC may place on the release of radon originating from the 11.e(2) material in the Niagara Landfill. You can write to them at this address:

U.S. Nuclear Regulatory Commission
Region 1
475 Allendale Road
King of Prussia, PA 19406

While DEC will no longer pursue jurisdiction over these releases under Part 380, we are still responsible for evaluating the environmental impacts of actions approved under other DEC permits. Therefore, we will continue to sample the landfill gases, as BFI has already agreed, to ensure that operation of the gas extraction system will not have an adverse impact upon the environment.

Please keep us informed of the status of the active gas extraction system. If you have any questions, please call me or Barbara Youngberg of this Bureau.

Sincerely,

Bureau of Pesticides & Radiation
Division of Solid & Hazardous
Materials

Enc.
cc:

[redacted], US Nuclear Regulatory System
[redacted] US Department of Energy
[redacted] Erie County Environmental Services
[redacted] New York State Department of Health
[redacted] Mayor, City of Tonawanda
[redacted] Board President, City of Tonawanda
[redacted] District
[redacted] New York State Department of Law
[redacted] Browning-Ferris Industries
[redacted] City of Tonawanda