



STP

03 JAN -8 PM 12: 59

Texas Department of Health

Eduardo J. Sanchez, M.D., M.P.H.
Commissioner of Health

1100 West 49th Street
Austin, Texas 78756-3189
1-888-963-7111

Radiation Control
(512) 834-6688

Gary R. B
Chief Operating Off

Charles E. Bell, M
Executive Deputy Commissic

January 2, 2003

Ms. Josephine Piccone
Deputy Director
Office of State and Tribal Programs
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Ms. Piccone:

Enclosed is a copy of the final revisions to the Texas Regulations for Control of Radiation, 25 Texas Administrative Code, §289.260, "Licensing of Uranium Recovery and Byproduct Material Disposal Facilities."

The changes from the proposed rule to the final rule are identified by double underlining for new language and bold-faced, brackets, and single underlining for deleted language. None of the changes implement any compatibility items that had not already been adopted. Some of the changes impact compatibility items already adopted. For those changes, the impact on compatibility as designated in STP Internal Procedure SA-200, is noted. Some revisions are not items of compatibility, but are being provided for informational purposes.

NRC Regulation	FR Notice (State Due Date)	RATS ID	Texas Regulation*	Final Texas Regulation (Effective Date)**
Revised language to ensure adequate flexibility to provide equivalent financial qualification documentation	Not a compatibility item	N/A	§289.260(d)(5)(C)	12/26/02

Clarified that reference is to the requirements in the chapter and not just those in §289.252	Not a compatibility item	N/A	§289.260(d)(12)(C)	12/26/02
Deleted subparagraph not applicable to this section	Change does not impact categories D, H, and S compatibility of 40.32	N/A	§289.260(e)(4)(B)	12/26/02
Clarified that requirement applies to disposal of byproduct material received from others	Not a compatibility item	N/A	§289.260(f)(1)(F)	12/26/02
Deleted proposed paragraph and added new paragraph consistent with other sections of rule	Not a compatibility item	N/A	§289.260(f)(2)	12/26/02
Clarified requirement about request for additional information by agency after license is issued	Not a compatibility item	N/A	§289.260(g)(3)	12/26/02
Clarified bankruptcy requirements	Not a compatibility item	N/A	§289.260(h)(4)	12/26/02
Revised to clarify that requirement applies to any building or outdoor area	Change does not impact category D, H, and S compatibility of 40.42(d)	N/A	§289.260(i)(3)(C)	12/26/02
Clarified that licenses apply to uranium recovery, byproduct material, or both	Not a compatibility item	N/A	§289.260(i)(18)	12/26/02

Added language to clarify when to reference drawings in a license renewal and information the reference should include	Not a compatibility item	N/A	§289.260(j)(1)	12/26/02
Changed name of agency	Change does not impact category D, H, and S compatibility of 10 CFR 40, Appendix A	N/A	§289.260(q)(10)(F)	12/26/02

If you have any questions, please feel free to contact me at 512-834-6688 or Cindy.Cardwell@tdh.state.tx.us.

Sincerely,

Cynthia C. Cardwell, Deputy Director
Standards and Special Projects
Bureau of Radiation Control
Texas Department of Health

LEGEND: (Final Amendments - With additional changes not proposed)

Double Underline = New language not proposed

[Bold, underline, and brackets] = Proposed new language now being deleted

[Bold and brackets] = Final language now being deleted

Regular Print = Current language incorporating proposed changes for final adoption

(No change) = No changes are being considered for the designated subdivision

§289.260. Licensing of Uranium Recovery and Byproduct Material Disposal Facilities.

(a) Purpose. This section provides for the specific licensing of the receipt, possession, use, or disposal of radioactive material in uranium recovery facilities and other operations that accept byproduct material for disposal. No person shall engage in such activities except as authorized in a specific license issued in accordance with this section unless otherwise provided for in §289.252 of this title (relating to Licensing of Radioactive Material).

(b) Scope. In addition to the requirements of this section, all licensees, unless otherwise specified, are subject to the requirements of §289.201 of this title (relating to General Provisions for Radioactive Material), §289.202 of this title (relating to Standards for Protection Against Radiation from Radioactive Material), §289.203 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections), §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services), §289.205 of this title (relating to Hearing and Enforcement Procedures), §289.251 of this title (relating to Exemptions, General Licenses, and General License Acknowledgements), §289.252 of this title, and §289.257 of this title (relating to Packaging and Transportation of Radioactive Material).

(c) Definitions. The following words and terms when used in this section shall have the following meaning unless the context clearly indicates otherwise.

(1)-(2) (No change.)

(3) Available technology - Technologies and methods for emplacing a final radon barrier on byproduct material piles or impoundments. This term shall not be construed to include extraordinary measures or techniques that would impose costs that are grossly excessive as measured by practice within the industry (or one that is reasonably analogous), (for example, by way of illustration only, unreasonable overtime, staffing, or transportation requirements, etc., considering normal practice in the industry; laser fusion of soils; etc.), provided there is reasonable progress toward emplacement of the final radon barrier. To determine grossly excessive costs, the relevant baseline against which costs shall be compared is the cost estimate for tailings impoundment closure contained in the licensee's approved reclamation plan, but costs beyond these estimates shall not automatically be considered grossly excessive.

(14)-(16) (No change.)

§289.260

(17) Hazardous constituent - Subject to subsection (q)(10)(E) of this section, "hazardous constituent" is a constituent that meets all three of the following tests:

(A) the constituent is reasonably expected to be in or derived from the byproduct material in the disposal area;

(B) the constituent has been detected in the groundwater in the uppermost aquifer; and

(C) the constituent is listed in 10 CFR Part 40, Appendix A, Criterion 13.

(18)-(19) (No change.)

(20) Liner - A continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment that restricts the downward or lateral escape of byproduct material, hazardous constituents, or leachate.

(21) Maximum credible earthquake - That earthquake that would cause the maximum vibratory ground motion based upon an evaluation of earthquake potential considering the regional and local geology and seismology and specific characteristics of local subsurface material.

(22)-(23) (No change.)

(24) Point of compliance - The site-specific location in the uppermost aquifer where the groundwater protection standard shall be met. The objective in selecting the point of compliance is to provide the earliest practicable warning that an impoundment is releasing hazardous constituents to the groundwater. The point of compliance is selected to provide prompt indication of groundwater contamination on the hydraulically downgradient edge of the disposal area.

(25) Principal activities - Activities authorized by the license that are essential to achieving the purpose(s) for which the license is issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

(26) Reclamation plan - For the purposes of subsection (q)(16)-(27) of this section, "reclamation plan" is the plan detailing activities to accomplish reclamation of the byproduct material disposal area in accordance with the technical criteria of this section. The reclamation plan shall include a schedule for reclamation milestones that are key to the completion of the final radon barrier, including as appropriate, but not limited to, wind blown tailings retrieval and placement on the pile, interim stabilization (including dewatering or the removal of freestanding liquids and recontouring), and final radon barrier construction. Reclamation of byproduct material shall also be addressed in the closure plan. The detailed reclamation plan may be incorporated into the closure plan.

§289.260

(27) Security (surety) - The following are examples of security:

(A)-(F) (No change.)

(28)-(31) (No change.)

(d) Filing application for specific licenses.

(1) Applications for specific licenses shall be filed in seven copies on BRC Form 252-2, "Application for Radioactive Material License."

(2) The agency may, at any time after the filing of the original application, require further statements or data to enable the agency to determine whether the application should be denied or the license should be issued.

(3) Each application shall be signed by the chief executive officer or other individual delegated the authority to manage, direct, or administer the licensee's activities.

(4) An application for a license may include a request for one or more activities. The agency may require the issuance of separate licenses for those activities.

(5) The applicant shall demonstrate to the agency that the applicant is financially qualified to conduct the licensed activity, including any required decontamination, decommissioning, reclamation, and disposal, before the agency issues or renews a license. The requirement is different from those in subsection (o) of this section for financial security.

(A) An applicant or licensee shall show financial qualification by submitting one of the following:

(i) the bonding company report or equivalent (from which information can be obtained to calculate a ratio as described in subparagraph (B) of this paragraph) that was used to obtain the financial security instrument used to meet the financial security requirement specified in subsection (o) of this section. However, if the applicant or licensee posted collateral to obtain the financial instrument used to meet the requirement for financial security specified in subsection (o) of this section, the applicant or licensee shall demonstrate financial qualification by one of the methods specified in clause (ii) or (iii) of this subparagraph;

(ii) SEC documentation (from which information can be obtained to calculate a ratio as described in subparagraph (B) of this paragraph), if the applicant or licensee is a publicly-held company; or

(iii) a self-test (for example, an annual audit report, certifying a company's assets and liabilities and resulting ratio (as described in subparagraph (B) of this

§289.260

paragraph) or, in the case of a new company, a business plan specifying expected expenses versus capitalization and anticipated revenues).

(B) Each applicant or licensee must declare its Standard Industry Classification (SIC) code. Several companies publish lists, on an annual basis, of acceptable assets-to-liabilities (assets divided by liabilities) ratio ranges for each type of SIC code. If an applicant or licensee submits documentation of its current assets and current liabilities or, in the case of a new company, a business plan specifying expected expenses versus capitalization and anticipated revenues, and the resulting ratio falls within an acceptable range as published by generally recognized companies (for example, Almanac of Business and Industrial Financial Ratios, Industry NORM and Key Business Ratios, Dun & Bradstreet Industry publications, and Manufacturing USA: Industry Analyses, Statistics, and Leading Companies), the agency will consider that applicant or licensee financially qualified to conduct the requested or licensed activity.

(C) The agency will consider other types of documentation if that documentation provides an equivalent measure of assurance of the applicant's or licensee's financial qualifications as found in subparagraphs (A) and (B) of this paragraph [assets and liabilities and the resulting ratio].

(6) An application for a license shall contain written specifications relating to the uranium recovery facility operations and the disposition of the byproduct material.

(7) Each application shall clearly demonstrate how the requirements of subsections (d)-(h) and (o)-(r) of this section have been addressed.

(8) Each application for a license shall be accompanied by the fee prescribed in §289.204 of this title.

(9) Each application shall be accompanied by a completed BRC Form 252-1, (Business Information Form).

(10) Applications for new licenses shall be processed in accordance with the following time periods.

(A) The first period is the time from receipt of an application by the Division of Licensing, Registration and Standards to the date of issuance or denial of the license or a written notice outlining why the application is incomplete or unacceptable. This time period is 180 days.

(B) The second period is the time from receipt of the last item necessary to complete the application to the date of issuance or denial of the license. This time period is 180 days.

(C) These time periods are exclusive of any time period incident to hearings and post-hearing activities required by Government Code, Chapters 2001 and 2002.

§289.260

(11) Notwithstanding the provisions of §289.204(e)(1) of this title, reimbursement of application fees may be granted in the following manner.

(A) In the event the application is not processed in the time periods as stated in paragraph (10) of this subsection, the applicant has the right to request of the Director of the Radiation Control Program full reimbursement of all application fees paid in that particular application process. If the director does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied.

(B) Good cause for exceeding the period established is considered to exist if:

(i) the number of applications for licenses to be processed exceeds by 15% or more the number processed in the same calendar quarter the preceding year;

(ii) another public or private entity utilized in the application process caused the delay; or

(iii) other conditions existed giving good cause for exceeding the established periods.

(C) If the request for full reimbursement authorized by subparagraph (A) of this paragraph is denied, the applicant may then request a hearing by appeal to the Commissioner of Health for a resolution of the dispute. The appeal will be processed in accordance with the Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title [§§1.21-1.34 of this title] (relating to the Texas Board of Health).

(12) Applications for licenses may be denied for the following reasons:

(A) any material false statement in the application or any statement of fact required under provisions of the Texas Radiation Control Act (Act);

(B) conditions revealed by the application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a license on an application; or

(C) failure to clearly demonstrate how the [these] requirements in this chapter have been addressed.

(e) General requirements for the issuance of specific licenses. A license application will be approved if the agency determines that:

§289.260

(1) the applicant and all personnel who will be handling the radioactive material are qualified by reason of training and experience to use the material in question for the purpose requested in accordance with these requirements in such a manner as to minimize danger to occupational and public health and safety and the environment;

(2) the applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to occupational and public health and safety and the environment;

(3) the issuance of the license will not be inimical to occupational and public health and safety nor have a long-term detrimental impact on the environment;

(4) qualifications of the designated radiation safety officer (RSO) are adequate for the purpose requested in the application and include as a minimum:

(A) possession of a high school diploma or a certificate of high school equivalency based on the GED test; and

[(B) completion of the training and testing requirements specified in this chapter for the activities for which the license application is submitted; and]

[(B) [(C)]training and experience necessary to supervise the radiation safety aspects of the licensed activity;

(5) the applicant satisfies all applicable special requirements in this section; and

(6) there is no reason to deny the license as specified in subsection (d)(12) of this section.

(f) Special requirements for a license application for uranium recovery and byproduct material disposal facilities. In addition to the requirements in subsection (e) of this section, a license will be issued if the applicant submits the items in paragraph (1) of this subsection for agency approval and meets the conditions in paragraphs (2) and (3) of this subsection.

(1) An application for a license shall include the following:

(A) for new licenses, an environmental report that includes the results of a one-year preoperational monitoring program and for renewal of licenses, an environmental report containing the results of the operational monitoring program. Both shall also include the following:

(i) description of the proposed project or action;

(ii) area/site characteristics including ecology, geology, topography, hydrology, meteorology, historical and cultural landmarks, and archaeology;

§289.260

(iii) radiological and nonradiological impacts of the proposed project or action, including waterway and groundwater impacts and any long-term impacts;

(iv) environmental effects of accidents;

(v) byproduct material disposal, decommissioning, decontamination, and reclamation and impacts of these activities; and

(vi) site and project alternative;

(B) a closure plan for decontamination, decommissioning, restoration, and reclamation of buildings and the site to levels that would allow unrestricted use and for reclamation of the byproduct material disposal areas in accordance with the technical requirements of subsection (q) of this section;

(C) proposal of an acceptable form and amount of financial security consistent with the requirements of subsection (o) of this section;

(D) procedures describing the means employed to meet the requirements of subsections (h)(7) and (8) and (q)(15) of this section during the operational phase of any project;

(E) specifications for the emissions control and disposition of the byproduct material; and

(F) for disposal of byproduct material received from others, information on the chemical and radioactive characteristics of the wastes to be received, detailed procedures for receiving and documenting incoming waste shipments, and detailed waste acceptance criteria.

(2) Unless otherwise exempted, commencement of major construction is prohibited until 30 days after the agency has given notice that a license is proposed to be granted. If a hearing is requested, the commencement of major construction is prohibited until notice of the contested case hearing is noticed in accordance with the Act. Commencement of major construction subsequent to issuance of the notices is at the economic risk of the applicant.

[2] Unless otherwise exempted, the applicant shall not begin construction at the site until the agency has issued the license. Commencement of construction prior to issuance of the license shall be grounds for denial of a license.

(3) Facility drawings submitted in conjunction with the application for a license shall be prepared by a professional engineer or engineering firm. Those drawings shall be final and shall be signed, sealed and dated in accordance with the requirements of the Texas Board of Professional Engineers, 22 Texas Administrative Code, Chapter 131.

(g) Issuance of specific licenses.

§289.260

(1) When the agency determines that an application meets the requirements of the Act and the requirements of the agency, the agency will issue a license authorizing the proposed activity in such form and containing the conditions and limitations as it deems appropriate or necessary.

(2) The agency may incorporate in any license at the time of issuance or thereafter by amendment, additional requirements and conditions with respect to the licensee's receipt, possession, use, and transfer of radioactive material subject to this section as it deems appropriate or necessary in order to:

(A) minimize danger to occupational and public health and safety or the environment;

(B) require reports and the keeping of records, and to provide for inspections of activities in accordance with the license as may be appropriate or necessary; and

(C) prevent loss or theft of radioactive material subject to this chapter.

(3) The agency may [also] request and the licensee shall provide additional information after the license has been issued to enable the agency to determine whether the license should be modified in accordance with subsection (n) of this section.

(h) Specific terms and conditions of license.

(1) Each license issued in accordance with this section shall be subject to the applicable provisions of the Act and to applicable rules, now or hereafter in effect, and orders of the agency.

(2) No license issued in accordance with this section and no right to possess or utilize radioactive material authorized by any license issued in accordance with this section shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person unless the agency shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and to applicable rules, now and hereafter in effect, and orders of the agency, and shall give its consent in writing.

(3) Each person licensed by the agency in accordance with this section shall confine use and possession of the radioactive material to the locations and purposes authorized in the license.

(4) Each licensee shall notify the agency, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy by the licensee or its parent company.

§289.260

(5) The notification in paragraph (4) of this subsection shall include:

(A) the bankruptcy court in which the petition for bankruptcy was filed;
and

(B) the date of the filing of the petition.

(6) A copy of the petition for bankruptcy shall be submitted to the agency along with the written notification.

(7) Daily inspection of any byproduct material retention systems shall be conducted by the licensee. General qualifications for individuals conducting inspections shall be approved by the agency. Records of the inspections shall be maintained for review by the agency.

(8) In addition to the applicable requirements of §289.202(ww)-(yy) of this title, the licensee shall immediately notify the agency of the following:

(A) any failure in a byproduct material retention system that results in a release of byproduct material into unrestricted areas;

(B) any release of radioactive material that exceeds the concentrations for water listed in Table II, Column 2, of §289.202(ggg)(2) of this title and that extends beyond the licensed boundary;

(C) any spill that exceeds 20,000 gallons and that exceeds the concentrations for water listed in Table II, Column 2, of §289.202(ggg)(2) of this title; or

(D) any release of solids that exceeds the limits in subsection (i)(4) of this section and that extends beyond the licensed boundary.

(9) In addition to the applicable requirements of §289.202(ww)-(yy) of this title, the licensee shall notify the agency within 24 hours of the following:

(A) any spill that extends:

(i) beyond the wellfield monitor well ring;

(ii) more than 400 feet from an injection or production well pipe artery to or from a recovery plant; or

(iii) more than 200 feet from a recovery plant; or

(B) any spill that exceeds 2,000 gallons and that exceeds the concentrations for water listed in Table II, Column 2, of §289.202(ggg)(2) of this title.

§289.260

(10) A licensee shall submit to the agency at five year intervals from the issuance of the license or at the time of renewal, if renewal and re-evaluation [reevaluation] occur in the same year, continued proof of the licensee's financial qualifications.

(i) Expiration and termination of licenses and decommissioning of sites, separate buildings, or outdoor areas.

(1) Except as provided in paragraph (2) of this subsection and subsection (j)(2) of this section, each specific license expires at the end of the day, in the month and year stated in the license.

(2) All license provisions continue in effect beyond the expiration date with respect to possession of radioactive material until the agency notifies the former licensee in writing that the provisions of the license are no longer binding. During this time, the former licensee shall:

(A) be limited to actions involving radioactive material that are related to decommissioning; and

(B) continue to control entry to restricted areas until the location(s) is suitable for release for unrestricted use in accordance with the requirements of paragraph (4) of this subsection.

(3) Within 60 days of the occurrence of any of the following, each licensee shall provide notification to the agency in writing and either begin decommissioning its site, or any separate buildings or outdoor areas that contain residual radioactivity in accordance with the closure plan in subsection (f)(1)(B) of this section, so that the buildings or outdoor areas are suitable for release in accordance with paragraph (4) of this subsection if:

(A) the license has expired in accordance with paragraph (1) of this subsection; or

(B) the licensee has decided to permanently cease principal activities, as defined in subsection (c)(25) of this section, at the entire site or in any separate building or outdoor area; or

(C) no principal activities have been conducted for a period of 24 months in any [separate] building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with agency requirements.

(4) Outdoor areas are considered suitable for release for unrestricted use if the following limits are not exceeded.

(A) The concentration of radium-226 or radium-228 in soil, averaged over

§289.260

any 100 square meters (m^2), shall not exceed the background level by more than:

(i) 5 picocuries per gram (pCi/g) (0.185 becquerel per gram (Bq/g)), averaged over the first 15 cm of soil below the surface; and

(ii) 15 pCi/g (0.555 Bq/g), averaged over 15 cm thick layers of soil more than 15 cm below the surface.

(B) The contamination of vegetation shall not exceed 5 pCi/g (0.185 Bq/g), based on dry weight, for radium-226 or radium-228.

(C) The concentration of natural uranium in soil, with no daughters present, averaged over any 100 m^2 , shall not exceed the background level by more than:

(i) 30 pCi/g (1.11 Bq/g), averaged over the top 15 cm of soil below the surface; and

(ii) 150 pCi/g (5.55 Bq/g), average concentration at depths greater than 15 centimeters below the surface so that no individual member of the public will receive an effective dose equivalent in excess of 100 mrem (1 mSv) per year.

(5) Coincident with the notification required by paragraph (3) of this subsection, the licensee shall maintain in effect all decommissioning financial security established by the licensee in accordance with subsection (o) of this section in conjunction with a license issuance or renewal or as required by this section. The amount of the financial security shall be increased, or may be decreased, as appropriate, with agency approval, to cover the detailed cost estimate for decommissioning established in accordance with paragraph (11)(E) of this subsection.

(A) Any licensee who has not provided financial security to cover the detailed cost estimate submitted with the closure plan shall do so on or before September 1, 1998.

(B) Following approval of the closure plan, a licensee may reduce the amount of the financial security, with the approval of the agency, as decommissioning proceeds and radiological contamination is reduced at the site.

(6) In addition to the provisions of paragraph (5) of this subsection, each licensee shall submit an updated closure plan to the agency within 12 months of the notification required by paragraph (3) of this subsection. The updated closure plan shall meet the requirements of subsections (f)(1)(B) and (o) of this section. The updated closure plan shall describe the actual conditions of the facilities and site and the proposed closure activities and procedures.

(7) The agency may grant a request to delay or postpone initiation of the decommissioning process if the agency determines that such relief is not detrimental to the

§289.260

occupational and public health and safety and is otherwise in the public interest. The request shall be submitted no later than 30 days before notification in accordance with paragraph (3) of this subsection. The schedule for decommissioning in paragraph (3) of this subsection may not begin until the agency has made a determination on the request.

(8) A decommissioning plan shall be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the agency and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(A) procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(B) workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(C) procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(D) procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(9) The agency may approve an alternate schedule for submittal of a decommissioning plan required in accordance with paragraph (3) of this subsection if the agency determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the occupational and public health and safety and is otherwise in the public interest.

(10) The procedures listed in paragraph (8) of this subsection may not be carried out prior to approval of the decommissioning plan.

(11) The proposed decommissioning plan for the site or separate building or outdoor area shall include:

(A) a description of the conditions of the site, separate buildings, or outdoor area sufficient to evaluate the acceptability of the plan;

(B) a description of planned decommissioning activities;

(C) a description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

§289.260

(D) a description of the planned final radiation survey;

(E) an updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate decommissioning; and

(F) for decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, a justification for the delay based on the criteria in paragraph (15) of this subsection.

(12) The proposed decommissioning plan will be approved by the agency if the information in the plan demonstrates that the decommissioning will be completed as soon as practicable and that the occupational health and safety of workers and the public will be adequately protected.

(13) Except as provided in paragraph (15) of this subsection, licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following the initiation of decommissioning.

(14) Except as provided in paragraph (15) of this subsection, when decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

(15) The agency may approve a request for an alternate schedule for completion of decommissioning of the site or separate buildings or outdoor areas and the license termination if appropriate, if the agency determines that the alternative is warranted by the consideration of the following:

(A) whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(B) whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period; and

(C) other site-specific factors that the agency may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, groundwater treatment activities, monitored natural groundwater restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(16) As the final step in decommissioning, the licensee shall:

(A) certify the disposition of all radioactive material, including accumulated byproduct material;

§289.260

(B) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in accordance with paragraph (4) of this subsection. The licensee shall, as appropriate;

(i) report the following levels:

(I) gamma radiation in units of microroentgen per hour ($\mu\text{R/hr}$) (millisieverts per hour (mSv/hr)) at 1 meter (m) from surfaces;

(II) radioactivity, including alpha and beta, in units of disintegrations per minute (dpm) or microcuries (μCi) (megabecquerels (MBq)) per 100 square centimeters (cm^2) for surfaces;

(III) μCi (MBq) per milliliter for water; and

(IV) picocuries (pCi) (becquerels (Bq)) per gram (g) for solids such as soils or concrete; and

(ii) specify the manufacturer's name, and model and serial number of survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(17) The agency will provide written notification to specific licensees, including former licensees with license provisions continued in effect beyond the expiration date in accordance with paragraph (2) of this subsection, that the provisions of the license are no longer binding. The agency will provide such notification when the agency determines that:

(A) radioactive material has been properly disposed;

(B) reasonable effort has been made to eliminate residual radioactive contamination, if present;

(C) a radiation survey has been performed that demonstrates that the premises are suitable for release in accordance with agency requirements;

(D) other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the requirements of paragraph (4) of this subsection;

(E) all records required by §289.202(nn)(2) of this title have been submitted to the agency;

§289.260

(F) the licensee has paid any outstanding fees required by §289.204 of this title and has resolved any outstanding notice(s) of violation issued to the licensee;

(G) the licensee has met the applicable technical and other requirements for closure and reclamation of a byproduct material disposal site; and

(H) the United States Nuclear Regulatory Commission (NRC) has made a determination that all applicable standards and requirements have been met.

(18) Licenses for uranium recovery and/or [and] byproduct material disposal are exempt from paragraphs (3)(C), (6), and (7) of this subsection with respect to reclamation of byproduct material impoundments and/or disposal areas. Timely reclamation plans for byproduct material disposal areas shall be submitted and approved in accordance with subsection (q)(16)-(27) of this section.

(19) A licensee may request that a subsite or a portion of a licensed site be released for unrestricted use before full license termination as long as release of the area of concern will not adversely impact the remaining unaffected areas and will not be recontaminated by ongoing authorized activities. When the licensee is confident that the area of concern will be acceptable to the agency for release for unrestricted use, a written request for release for unrestricted use and agency confirmation of closeout work performed shall be submitted to the agency. The request should include a comprehensive report, accompanied by survey and sample results that show contamination is less than the limits specified in paragraph (4) of this subsection and an explanation of how ongoing authorized activities will not adversely affect the area proposed to be released. Upon confirmation by the agency that the area of concern is releasable for unrestricted use, the licensee may apply for a license amendment, if required.

(j) Renewal of license.

(1) Request for renewal of specific licenses shall be filed in accordance with subsections (d)(1)-(8) and (10), and (f)(1) of this section. In any application for renewal, the applicant may incorporate drawings by clear and specific reference (for example, title, date and unique number of drawing), if no modifications have been made since previously submitted.

(2) In any case in which a licensee, not less than 30 days prior to expiration of the existing license, has filed a request in proper form for renewal or for a new license authorizing the same activities, such existing license shall not expire until the application has been finally determined by the agency.

(k) (No change.)

(l) Agency action on applications to renew or amend. In considering a request by a licensee to renew or amend a license, the agency will apply the appropriate criteria in subsections (e) and (f) of this section.

§289.260

(m) Transfer of material.

(1) No licensee shall transfer radioactive material except as authorized in accordance with this chapter.

(2) Except as otherwise provided in a license and subject to the provisions of paragraphs (3) and (4) of this subsection, any licensee may transfer radioactive material:

(A)-(C) (No change.)

(D) to any person authorized to receive such material in accordance with terms of a general license or its equivalent, a specific license or equivalent licensing document issued by the agency, [the] NRC, any agreement state, any licensing state, or to any person otherwise authorized to receive such material by the federal government or any agency of the federal government, or the agency;

(E)-(F) (No change.)

(3) Before transferring radioactive material to a specific licensee of the agency, [the] NRC, an agreement state, a licensing state, or to a general licensee who is required to register with the agency, the licensee transferring the radioactive material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

(4)-(5) (No change.)

(n) Modification and revocation of licenses.

(1) The terms and conditions of all licenses shall be subject to amendment, revision, or modification. A license may be suspended or revoked by reason of amendments to the Act, by reason of rules in this chapter, or orders issued by the agency.

(2) Any license may be revoked, suspended, or modified, in whole or in part for any of the following:

(A) any material false statement in the application or any statement of fact required under provisions of the Act;

(B) conditions revealed by such application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to issue a license on an original application; or

(C) violation of, or failure to observe any of the terms and conditions of the Act, this chapter, the license, or order of the agency.

§289.260

(3) Except in cases in which occupational and public health and safety or the environment require otherwise, no license shall be modified, suspended, or revoked unless, prior to the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the licensee in writing and the licensee shall have been afforded an opportunity to demonstrate compliance with all lawful requirements.

(4) Each specific license revoked by the agency expires at the end of the day on the date of the agency's final determination to revoke the license, or on the revocation date stated in the determination, or as otherwise provided by agency order.

(o) Financial security requirements.

(1) Financial security for decontamination, decommissioning, reclamation, restoration, disposal, and any other requirements of the agency shall be established by each licensee prior to the commencement of operations to assure that sufficient funds will be available to carry out the decontamination and decommissioning of buildings and the site and for the reclamation of any byproduct material disposal areas. The amount of funds to be ensured by such security arrangements shall be based on agency-approved cost estimates in an agency-approved closure plan for:

(A) decontamination and decommissioning of buildings and the site to levels that allow unrestricted use of these areas upon decommissioning; and

(B) (No change.)

(2) (No change.)

(3) The security shall also cover the payment of the charge for long-term surveillance and control for byproduct material disposal areas required by subsection (p)(3) of this section.

(4) (No change.)

(5) The security shall be continuous for the term of the license and shall be payable in the state of Texas to the Radiation and Perpetual Care Fund.

(6) The licensee's security mechanism will be reviewed annually by the agency to assure that sufficient funds would be available for completion of the reclamation plan if the work had to be performed by an independent contractor. The amount of security liability should be adjusted to recognize any increases or decreases resulting from inflation, changes in engineering plans, activities performed, and any other conditions affecting costs.

(7) Regardless of whether reclamation is phased through the life of the operation or takes place at the end of operations, an appropriate portion of security liability shall be retained until final compliance with the reclamation plan is determined. This will yield a security that is at

§289.260

least sufficient at all times to cover the costs of decommissioning and reclamation of the areas that are expected to be disturbed before the next license renewal. The term of the security mechanism shall be open ended. This assurance would be provided with a security instrument that is written for a specified period of time (for example, five years) yet which shall be automatically renewed unless the security notifies the agency and the licensee some reasonable time (for example, 90 days) prior to the renewal date of their intention not to renew. In such a situation the security requirement still exists and the licensee would be required to submit an acceptable replacement security within a brief period of time to allow at least 60 days for the agency to collect.

(8) Proof of forfeiture shall not be necessary to collect the security so that in the event that the licensee could not provide an acceptable replacement security within the required time, the security shall be automatically collected prior to its expiration. The conditions described above would have to be clearly stated on any security instrument, and shall be agreed upon by all parties.

(9) Self-insurance, or any arrangement that essentially constitutes self insurance (for example, a contract with a state or federal agency), will not satisfy the security requirement since this provides no additional assurance other than that which already exists through license requirements.

(p) Long-term care and maintenance requirements.

(1)-(2) (No change.)

(3) A minimum charge of \$250,000 (1978 dollars) or more, if demonstrated as necessary by the agency, shall be paid into the Radiation and Perpetual Care Fund to cover the costs of long-term care and maintenance. The total charge shall be paid prior to the termination of a license. With agency approval, the charge may be paid in installments. The total or unpaid portion of the charge shall be covered during the term of the license by additional security meeting the requirements of subsection (o) of this section. If site surveillance, control, or maintenance requirements at a particular site are determined, on the basis of a site-specific evaluation, to be significantly greater (for example, if fencing or monitoring is determined to be necessary), the agency may specify a higher charge. The total charge shall be such that, with an assumed 1.0% annual real interest rate, the collected funds will yield interest in an amount sufficient to cover the annual costs of site care, surveillance, and where necessary, maintenance. Prior to actual payment, the total charge will be adjusted annually for inflation. The inflation rate to be used is that indicated by the change in the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics.

(4) (No change.)

(q) Technical requirements.

(1)-(2) (No change.)

§289.260

(3) The site selection process shall be an optimization to the maximum extent reasonably achievable in terms of these site features.

(4)-(5) (No change.)

(6) The applicant's environmental report shall evaluate alternative sites and disposal methods and shall consider disposal of byproduct material by placement below grade. Where full below grade burial is not practicable, the size of retention structures, and size and steepness of slopes associated with exposed embankments shall be minimized by excavation to the maximum extent reasonably achievable or appropriate given the geologic and hydrologic conditions at a site. In these cases, it shall be demonstrated that an above grade disposal program will provide reasonably equivalent isolation of the byproduct material from natural erosional forces.

(7) To avoid proliferation of small waste disposal sites and thereby reduce perpetual surveillance obligations, byproduct material from in situ extraction operations, such as residues from solution evaporation or contaminated control processes, and wastes from small remote above ground extraction operations shall be disposed of at existing large mill tailings disposal sites; unless, considering the nature of the wastes, such as their volume and specific activity, and the costs and environmental impacts of transporting the wastes to a large disposal site, such offsite disposal is demonstrated to be impracticable or the advantages of onsite burial clearly outweigh the benefits of reducing the perpetual surveillance obligations.

(8) The following site and design requirements shall be adhered to whether byproduct material is disposed of above or below grade:

(A) the upstream rainfall catchment areas shall be minimized to decrease erosion potential by flooding that could erode or wash out sections of the byproduct material disposal area;

(B) (No change.)

(C) the embankment and cover slopes shall be relatively flat after final stabilization to minimize erosion potential and to provide conservative factors of safety assuring long term stability. The objective should be to contour final slopes to grades that are as close as possible to those that would be provided if byproduct material was disposed of below grade. Slopes shall not be steeper than 5 horizontal to 1 vertical (5h:1v), except as specifically authorized by the agency. Where steeper slopes are proposed, reasons why a slope steeper than 5h:1v would be as equally resistant to erosion shall be provided, and compensating factors and conditions that make such slopes acceptable shall be identified;

(D) (No change.)

(E) where a full vegetative cover is not likely to be self-sustaining due to climatic conditions, such as in semi-arid and arid regions, rock cover shall be employed on slopes

§289.260

of the impoundment system. The agency will consider relaxing this requirement for extremely gentle slopes, such as those that may exist on the top of the pile;

(F) (No change.)

(G) individual rock fragments shall be dense, sound, and resistant to abrasion, and shall be free from cracks, seams, and other defects that would tend to unduly increase their destruction by erosion and weathering action. Local rock materials are permissible provided the characteristics under local climatic conditions indicate similar long-term performance as a protective layer. Weak, friable, or laminated aggregate may not be used;

(H) rock covering of slopes may not be required where top covers are very thick (on the order of 10 m or greater); impoundment slopes are very gentle (on the order of 10h:1v or less); bulk cover materials have inherently favorable erosion resistance characteristics; there is negligible drainage catchment area upstream of the pile; and there is good wind protection;

(I)-(K) (No change.)

(9) Groundwater protection. The following groundwater protection requirements and those in paragraphs (10) and (11) of this subsection and subsection (s) of this section apply during operations and until closure is completed. Groundwater monitoring to comply with these standards is required by paragraphs (28) and (29) of this subsection.

(A)-(B) (No change.)

(C) The applicant or licensee will be exempted from the requirements of subparagraph (A) of this paragraph if the agency finds, based on a demonstration by the applicant or licensee, that alternate design and operating practices, including the closure plan, together with site characteristics will prevent the migration of any hazardous constituents into groundwater or surface water at any future time. In deciding whether to grant an exemption, the agency will consider:

(i)-(iii) (No change.)

(iv) all other factors that would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(D)-(E) (No change.)

(10) Byproduct materials shall be managed to conform to the following secondary groundwater protection requirements:

(A) hazardous constituents, as defined in subsection (c)(17) of this section, entering the groundwater from a licensed site shall not exceed the specified concentration limits in the uppermost aquifer beyond the point of compliance during the compliance period.

§289.260

(B)-(E) (No change.)

(F) In making any determinations under subparagraphs (E) and (H) of this paragraph about the use of groundwater in the area around the facility, the agency will consider any identification of underground sources of drinking water and exempted aquifers made by the United States Environmental Protection Agency (EPA) and the Texas Commission on Environmental Quality [Texas Natural Resource Conservation Commission (Commission)].

(G) (No change.)

(H) Alternate concentration limits to background concentration or to the drinking water limits in subsection (s) of this section that present no significant hazard may be proposed by licensees for agency consideration. Licensees shall provide the basis for any proposed limits including consideration of practicable corrective actions, evidence that limits are as low as reasonably achievable, and information on the factors the agency shall consider. The agency will establish a site-specific alternate concentration limit for a hazardous constituent, as provided in subparagraph (G) of this paragraph, if it finds that the proposed limit is as low as reasonably achievable, after considering practicable corrective actions, and that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In making the present and potential hazard finding, the agency will consider the factors listed in subparagraph (D) of this paragraph.

(11) If the groundwater protection standards established under subparagraph (D) of this paragraph are exceeded at a licensed site, a corrective action program shall be put into operation as soon as is practicable, and in no event later than 18 months after the agency finds that the standards have been exceeded. The licensee shall submit the proposed corrective action program and supporting rationale for agency approval prior to putting the program into operation, unless otherwise directed by the agency. The licensee's proposed program shall address removing or treating in place any hazardous constituents that exceed concentration limits in groundwater between the point of compliance and downgradient licensed site boundary. The licensee shall continue corrective action measures to the extent necessary to achieve and maintain compliance with the groundwater protection standard. The agency will determine when the licensee may terminate corrective action measures based on data from the groundwater monitoring program and other information that provides reasonable assurance that the groundwater protection standard will not be exceeded.

(12) In developing and conducting groundwater protection programs, applicants and licensees shall also consider the following:

(A) (No change.)

§289.260

(B) mill process designs that provide the maximum practicable recycle of solutions and conservation of water to reduce the net input of liquid to the byproduct material impoundment;

(C)-(D) (No change.)

(13)-(15) (No change.)

(16) In disposing of byproduct material, licensees shall place an earthen cover over the byproduct material at the end of the facility's operations and shall close the waste disposal area in accordance with a design that provides reasonable assurance of control of radiological hazards to the following:

(A)-(B) (No change.)

(17) In computing required byproduct material cover thicknesses, moisture in soils in excess of amounts found normally in similar soils in similar circumstances shall not be considered. Direct gamma exposure from the byproduct material should be reduced to background levels. The effects of any thin synthetic layer shall not be taken into account in determining the calculated radon exhalation level. Cover shall not include materials that contain elevated levels of radium. Soils used for near-surface cover shall be essentially the same, as far as radioactivity is concerned, as that of surrounding surface soils. If non-soil materials are proposed as cover materials, the licensee shall demonstrate that such materials will not crack or degrade by differential settlement, weathering, or other mechanisms over the long term.

(18) As soon as reasonably achievable after emplacement of the final cover to limit releases of radon-222 from uranium byproduct material and prior to placement of erosion protection barriers of other features necessary for long-term control of the tailings, the licensee shall verify through appropriate testing and analysis that the design and construction of the final radon barrier is effective in limiting releases of radon-222 to a level not exceeding 20pCi/m²s averaged over the entire pile or impoundment using the procedures described in Appendix B, method 115 of 40 CFR Part 61, or another method of verification approved by the agency as being at least as effective in demonstrating the effectiveness of the final radon barrier.

(19) When phased emplacement of the final radon barrier is included in the applicable reclamation plan, as defined in subsection (c)(26) of this section, the verification of radon-222 release rates required in paragraph (30) of this subsection shall be conducted for each portion of the pile or impoundment as the final radon barrier for that portion is emplaced.

(20) Within 90 days of the completion of all testing and analysis relevant to the required verification in paragraphs (30)(C) and (30)(D) of this subsection, the uranium recovery licensee shall report to the agency the results detailing the actions taken to verify that levels of release of radon-222 do not exceed 20 pCi/m²s when averaged over the entire pile or impoundment. The licensee shall maintain records documenting the source of input parameters, including the results of all measurements on which they are based, the calculations and/or analytical methods used to

§289.260

derive values for input parameters, and the procedure used to determine compliance. These records shall be maintained until termination of the license and shall be kept in a form suitable for transfer to the custodial agency at the time of transfer of the site to the state or federal government in accordance with subsection (r) of this section.

(21) Near-surface cover materials may not include waste, rock, or other materials that contain elevated levels of radium. Soils used for near-surface cover shall be essentially the same, as far as radioactivity is concerned, as surrounding surface soils. This is to ensure that surface radon exhalation is not significantly above background because of the cover material itself.

(22) The design requirements for longevity and control of radon releases apply to any portion of a licensed and/or disposal site unless such portion contains a concentration of radium in land averaged over areas of 100 square meters (m^2), that, as a result of byproduct material, does not exceed the background level by more than:

(A)-(B) (No change.)

(23) (No change.)

(24) For impoundments containing uranium byproduct materials, the final radon barrier shall be completed as expeditiously as practicable considering technological feasibility after the pile or impoundment ceases operation in accordance with a written reclamation plan, as defined in subsection (c)(26) of this section, approved by the agency, by license amendment. (The term "as expeditiously as practicable considering technological feasibility" includes "factors beyond the control of the licensee.") Deadlines for completion of the final radon barrier and applicable interim milestones shall be established as license conditions. Applicable interim milestones may include, but are not limited to, the retrieval of windblown byproduct material and placement on the pile and the interim stabilization of the byproduct material (including dewatering or the removal of freestanding liquids and recontouring). The placement of erosion protection barriers or other features necessary for long-term control of the byproduct material shall also be completed in a timely manner in accordance with a written reclamation plan approved by the agency by license amendment.

(25) The agency may approve by license amendment a licensee's request to extend the time for performance of milestones related to emplacement of the final radon barrier if, after providing an opportunity for public participation, the agency finds that the licensee has adequately demonstrated in the manner required in paragraph (18) of this subsection that releases of radon-222 do not exceed an average of 20 pCi/ m^2 s. If the delay is approved on the basis that the radon releases do not exceed 20 pCi/ m^2 s, a verification of radon levels, as required by paragraph (18) of this subsection, shall be made annually during the period of delay. In addition, once the agency has established the date in the reclamation plan for the milestone for completion of the final radon barrier, the agency may by license amendment extend that date based on cost if, after providing an opportunity for public participation, the agency finds that the licensee is making good faith efforts to emplace the final radon barrier, the delay is consistent with the definition of "available technology,"

§289.260

and the radon releases caused by the delay will not result in a significant incremental risk to the public health.

(26) The agency may authorize by license amendment, upon licensee request, a portion of the impoundment to accept uranium byproduct material, or such materials that are similar in physical, chemical, and radiological characteristics to the uranium mill tailings and associated wastes already in the pile or impoundment, from other sources during the closure process. No such authorization will be made if it results in a delay or impediment to emplacement of the final radon barrier over the remainder of the impoundment in a manner that will achieve levels of radon-222 releases not exceeding 20 pCi/m²s averaged over the entire impoundment. The verification required in paragraph (18) of this subsection may be completed with a portion of the impoundment being used for further disposal if the agency makes a final finding that the impoundment will continue to achieve a level of radon-222 release not exceeding 20 pCi/m²s averaged over the entire impoundment. After the final radon barrier is complete except for the continuing disposal area, only byproduct material will be authorized for disposal, and the disposal will be limited to the specified existing disposal area. This authorization by license amendment will only be made after providing opportunity for public participation. Reclamation of the disposal area, as appropriate, shall be completed in a timely manner after disposal operations cease in accordance with paragraph (16) of this subsection. These actions are not required to be complete as part of meeting the deadline for final radon barrier construction.

(27)-(28) (No change.)

(29) The licensee shall establish a detection monitoring program needed for the agency to set the site-specific groundwater protection standards in paragraph (10)(D) of this subsection. For all monitoring under this paragraph, the licensee or applicant will propose, as license conditions for agency approval, which constituents are to be monitored on a site-specific basis. The data and information shall provide a sufficient basis to identify those hazardous constituents that require concentration limit standards and to enable the agency to set the limits for those constituents and compliance period. They may provide the basis for adjustments to the point of compliance. The detection monitoring program shall be in place when specified by the agency in orders or license conditions. Once groundwater protection standards have been established in accordance with paragraph (10)(D) of this subsection, the licensee shall establish and implement a compliance monitoring program. In conjunction with a corrective action program, the licensee shall establish and implement a corrective action monitoring program to demonstrate the effectiveness of the corrective actions. Any monitoring program required by this paragraph may be based on existing monitoring programs to the extent the existing programs can meet the stated objective for the program.

(30) Systems shall be designed and operated so that all airborne effluent releases are as low as is reasonably achievable. The primary means of accomplishing this shall be by means of emission controls. Institutional controls, such as extending the site boundary and exclusion area, may be employed to ensure that offsite exposure limits are met, but only after all practicable measures have been taken to control emissions at the source.

§289.260

(A) During operations and prior to closure, radiation doses from radon emissions from surface impoundments of byproduct materials shall be kept as low as is reasonably achievable.

(B) (No change.)

(C) To control dusting from byproduct material, that portion not covered by standing liquids shall be wetted or chemically stabilized to prevent or minimize blowing and dusting to the maximum extent reasonably achievable. This requirement may be relaxed if byproduct material are effectively sheltered from wind, as in the case of below-grade disposal. Consideration shall be given in planning byproduct material disposal programs to methods for phased covering and reclamation of byproduct material impoundments. To control dusting from diffuse sources, applicants/licensees shall develop written operating procedures specifying the methods of control that will be utilized.

(D) (No change.)

(E) Byproduct materials shall be managed so as to conform to the applicable provisions of 40 CFR 440, as codified on January 1, 1983.

(31) (No change.)

(32) The agency may find that the proposed alternatives meet the agency's requirements if the alternatives will achieve a level of stabilization and containment of the sites concerned and a level of protection for the public health and safety and the environment from radiological and nonradiological hazards associated with the sites, which is equivalent to, to the extent practicable, or more stringent than the level that would be achieved by the requirements of subsections (o)-(r) of this section and the standards promulgated by [the] EPA in 40 CFR Part 192, Subparts D and E.

(33) (No change.)

(34) Any proposed alternatives to the specific requirements in subsections (o)-(r) of this section shall meet the requirements of 10 CFR 150.31(d).

(35) (No change.)

(r) Land ownership of byproduct material disposal sites.

(1) (No change.)

(2) Unless exempted by [the] NRC, title to land (including any affected interests therein) that is used for the disposal of byproduct material or that is essential to ensure the long-term

§289.260

stability of the disposal site and title to the byproduct material shall be transferred to the State of Texas or the United States prior to the termination of the license. Material and land transferred shall be transferred without cost to the State of Texas or the United States. In cases where no ongoing site surveillance will be required, surface land ownership transfer requirements may be waived. For licenses issued before November 8, 1981, [the] NRC may take into account the status of the ownership of the land and interests therein, and the ability of a licensee to transfer title and custody thereof to the State.

(3) Any uranium recovery facility license shall contain terms and conditions as the agency determines necessary to assure that, prior to termination of the license, the licensee will comply with ownership requirements of this subsection for sites used for tailings disposal.

(4) (No change.)

(5) If [the] NRC, subsequent to title transfer, determines that use of the surface or subsurface estates, or both, of the land transferred to the state or federal government will not endanger the public health and safety or the environment, [the] NRC may permit the use of the surface or subsurface estates, or both, of such land in a manner consistent with the provisions of this section. If [the] NRC permits the use of such land, it will provide the person who transferred the land with the first refusal with respect to the use of such land.

(s) (No change.)