

June 29, 2004

Ruth E. McBurney, CHP, Director
Division of Licensing, Registration
and Standards
Bureau of Radiation Control
Texas Department of Health
1100 West 49th Street
Austin, TX 78756-3199

Dear Ms. McBurney:

Thank you for your letter of May 19, 2004 which documents our conference call of May 13, 2004. Based on our review of the letter, discussions with Waste Control Specialist staff, and the June 9, 2004 email from Pete Myers, we identified some clarifying information that should be included for accurate documentation of the discussions on May 13, 2004.

The first item is the NRC policy for licensing a commercial 11e.(2) disposal site. During the call, you requested a copy of the criteria the Commission established for licensing the Envirocare commercial 11e.(2) byproduct material disposal site. Enclosed is a copy of the February 6, 1991 acceptance review letter to Envirocare of Utah that includes the January 25, 1991 Federal Register notice in which the Commission specified the applicable regulatory criteria to be used in that specific case. It would not be unreasonable for Texas to apply similar criteria to a similar situation.

The second item is a clarification of the second issue in your May 19, 2004 letter. The May 13, 2004 discussion did not specifically address how Texas would apply the exemption/alternative concentration limits in the Texas equivalent to Appendix A, criterion 5, specifically the Texas equivalent to Criterion 5A(3) and Criterion 5B(5)(c). Unlike the alternative standard requirement in Section 274o of the Atomic Energy Act of 1954, as amended, which requires a Commission determination, Texas may determine whether the exemptions/alternatives specified in Criterion 5, may be applied.

The third item is a clarification of the requirement under Criterion 11 of 10 CFR Part 40, Appendix A addressing land ownership, specifically mineral rights. During our May 13 discussion, the NRC staff stressed the importance of an applicant providing information that indicates it has control over the lands, including subsurface mineral rights, to be used as an 11e.(2) byproduct material disposal area, to ensure that this area will not be disturbed after the site has been closed and transferred to the long-term custodian. The staff commented, as you reiterated in your May 19 letter, that if the applicant has not addressed this issue in an acceptable manner, the staff would propose that the license application be denied. Regarding the issue of mineral rights, we also discussed that the applicant may propose legal mechanisms to limit disturbance of the disposal area, e.g., making all mineral rights subservient to the long-term custodian's rights to enforce the Long-Term Surveillance Plan providing for the maintenance and containment of the 11e.(2) byproduct material disposal area. In addition, we pointed out that any proposed legal mechanism must be viable and

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durable under Texas statutes. Finally, any alternative to acquiring the mineral rights located under a proposed 11e.(2) byproduct material disposal area, should be acceptable to the long-term custodian (DOE at this time) and must be at no cost to the custodian to implement.

I hope this clarifies our discussion; however, if you have any further questions, please let me know.

Sincerely,

/RA/

Dennis M. Sollenberger
Senior Health Physicist
Office of State and Tribal Programs

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