

August 19, 2004

Mr. Richard A. Ratliff, PE, LMP, Chief
Bureau of Radiation Control
Texas Department of Health
1100 West 49th Street
Austin, TX 78756-3189

Dear Mr. Ratliff:

I have received your letter, dated April 27, 2004, requesting review of proposed changes to the Texas Regulations for Control of Radiation, 25 Texas Administrative Code, §289.202, "Standards for Protection Against Radiation from Radioactive Materials" that concern clearance and disposal of low-level radioactive materials in hazardous waste disposal facilities.

The staff offers the following comments on your independent rulemaking efforts to generically address clearance and disposal of low-level radioactive material in a hazardous waste disposal facility. The NRC is currently addressing the issue of control of solid materials in a rulemaking and we are working with the United States Environmental Protection Agency (EPA) to address the issue of what radioactive materials can be safely disposed of at Resources Conservation and Recovery Act (RCRA) Subtitle C disposal facilities. EPA has published an Advance Notice of Proposed Rulemaking to gather information on the concept of disposal of low-level radioactive materials or low-level mixed waste in hazardous waste disposal facilities.

We note that your proposed regulation uses the ANSI/HPS N13.12 Standard. This is certainly a viable option which is protective of public health and safety, and one that the NRC as a federal agency is required to consider under the National Technology Transfer Act of 1996. However, we believe that the International Atomic Energy Agency's DS-161 is a better standard to use, particularly because it may be widely adopted internationally. Technically the two standards are similar and the ANSI/HPS standard is a reasonable and sound place for regulatory actions to begin. In addition, the Commission has encouraged ANSI to revise its standards and adopt the DS-161 values. Therefore, the ANSI/HPS standard and the DS-161 may come into alignment in the future.

We offer the following specific comments on your proposed regulation:

1. For the clearance regulation:
 - The definition of debris is not clear.
 - The State's technical evaluation of the licensee's proposal, including pathway or dose analyses supporting the values in table in §289.202 (eee)(2), is necessary to conduct a complete review. Therefore, we did not perform a technical evaluation.

2. For disposal at RCRA disposal facilities:

- A supporting analysis performed by Texas for the data contained in the table in 25 TAC 289.202 (ggg)(6) of the proposed rule was not provided to the NRC and would be necessary for any technical review. Therefore, no technical evaluation could be performed.

If you have any questions regarding our review, or on the actions we or EPA have taken in this area, please contact me or Osiris Siurano of my staff at 301-415-2307 or OSP@NRC.GOV.

Sincerely,

/RA/

Paul Lohaus, Director
Office of State and Tribal Programs

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