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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

SENT ELECTRONIC MAIL

April 26, 2005

John Hickman
Project Manager
U.S. Nuclear Regulatory Commission
Decommissioning Directorate
Washington, DC 20555-0001

Dear Mr. Hickman:

The Texas Commission on Environmental Quality (TCEQ) received your request letter on March 28, 2005 via electronic mail for review and comment on the draft Environmental Assessment and Finding of No Significant Impact, Docket No. 50-029. Thank you for the opportunity to provide comments on the draft. Due to the potential major regulatory and policy implications related to the disposal of radioactive substances within Texas borders, it is important for the TCEQ to fully understand the impact of designating a TCEQ-permitted facility for new waste streams.

It is unclear under what authority the NRC would exempt this waste, that would otherwise be treated as low-level radioactive waste, from the licensing requirements for disposal in Texas. Texas Health & Safety Code Chapter 401 provides a detailed process and schedule for the licensing of a single low-level radioactive waste disposal site to handle commercial low-level radioactive waste, such as decommissioning waste from nuclear power plants. Texas regulations, in Title 30 Texas Administrative Code Section 336.203, provide that no person shall dispose of radioactive material unless that person has a license from the TCEQ, or an exemption from the Texas Department of State Health Services under Texas Health and Safety Code Section 401.106(a). Waste Control Specialists is not currently licensed for the disposal of radioactive material, and the TCEQ is not aware of a Texas Department of State Health Services exemption that applies to the Yankee Atomic decommissioning waste.

Based on a April 21, 2005 letter received from Mr. Jack D. Rollins of Yankee Atomic Electric Power Company, shipment of this decommissioning waste is scheduled to begin the week of May 2, 2005. To comply with Texas statute and state requirements, an exemption from the Texas Department of State Health Services under Texas Health and Safety Code Section 401.106(a) would be necessary for waste containing radioactive material to be acceptable for disposal in a TCEQ-permitted RCRA facility. In order for the Department to grant an exemption for waste generated outside Texas by a non-Department licensee, a formal request for Proposal for Rulemaking would need to be submitted

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as indicated in Mrs. Ruth E. McBurney's March 24, 2005 letter providing comments to the NRC. The TCEQ is not aware of any proposal related to this waste pending at the Department. As a result of state requirements, it appears that there are significant impediments to this action taking place in the time frame stated. Moving forward without necessary exemptions may put the generator and receiving facility at risk of being in violation of state statute and rules.

Commercial low-level radioactive waste generated outside of Texas are subject to the terms of the Texas Low-Level Radioactive Waste Disposal Compact and would require Texas Compact Commission approval for importation to a Texas disposal site. The Texas Compact Section 6.02 provides that no person shall manage or dispose of any low-level radioactive waste within the party states unless the low-level radioactive waste was generated in the party states, except as approved in an agreement of the Texas Compact Commission for the importation of low-level radioactive waste into the compact for management or disposal. The TCEQ is currently engaged in the low-level radioactive waste disposal licensing process according to the ceded regulatory authority under *Articles of Agreement Between the United States Nuclear Regulatory Commission and the State of Texas for Discontinuance of Certain Commission and Regulatory Authority and Responsibility within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended*.

Based on the review of the draft, it is unclear why a specific site in Texas, some 2,000 miles from the point of generation, is named for the proposed disposal of this material if the NRC is considering an exemption of the material. It could be assumed that a decision of exemption from future treatment as low-level radioactive waste would not be conditionally based on a specific site named for ultimate disposition. If an exemption based on radiological characteristics is appropriate for a given waste stream, it would seem logical that any disposal facility that could accommodate the non-radiological characteristics of that waste stream would also be appropriate.

It appears from a review of the draft Environmental Assessment and information submitted to the NRC by Yankee Atomic Electric Company that no consideration was given to the existing radioactivity already buried at the Waste Control Specialist RCRA facility nor future total radioactivity that may be buried at this site. The baseline radioactivity and future additional anticipated radioactivity seems to be a critical element missing in order to determine that there is no significant radiological impact for this specific site. The draft indicates that there is no environmental impact of transportation of the waste based on freight trucking. It is our understanding that the waste is planned for rail shipment rather than truck shipment as indicated in the draft.

There are Texas Department of State Health Services' storage and processing license conditions referred to in the supporting information of this draft that are implied to provide assurance for radiological protection to the public for the proposed disposal of Yankee Atomic decommissioning waste. There seems to be confusion between requirements related to the RCRA permit issued by the TCEQ and the radioactive material storage and processing license issued by the Texas Department

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of State Health Services. The license issued by the Department does not include disposal authorization nor does it provide conditions related to the RCRA permit. It should be noted that the Department license and the RCRA permit are issued under different regulations and jurisdictions with distinct requirements for management and disposal of waste.

In order to carry out state policy, the TCEQ has exclusively recognized exemptions from disposal requirements granted by the Texas Department of State Health Services, either by rule or license condition, to licensees under their jurisdiction that generate waste containing radioactive material. Texas has taken care to work together, amongst its state agencies with regulatory authority over radioactive material, to provide for the protection of public health and safety and the environment, while allowing for viable disposal options for waste generators. In order for regulatory agencies in Texas to implement state policies on radioactive substance disposal, it is imperative that waste streams generated in, and potentially entering our state, are understood and evaluated under those policies.

Thank you for consideration of TCEQ comments. If you would like to discuss this matter in more detail or need clarification regarding comments, please contact me at (512) 239-6731.

Sincerely,



Susan Jablonski
Technical Advisor
Agreement State Director
Texas Commission on Environmental Quality

CC Paul Lohaus, U.S. Nuclear Regulatory Commission
Jack D. Rollins, Yankee Atomic Electric Power Company
Bill Dornsife, Waste Control Specialists LLC
Ruth E. McBurney, Texas Department of State Health Services