

November 1, 2007

Susan Jablonski, Director
Radioactive Materials Division
Texas Commission on Environmental Quality
P.O. Box 13087 MS 122
Austin, TX 78711-3087

Dear Ms. Jablonski:

We have reviewed the Texas Commission on Environmental Quality's (TCEQ) proposed regulations to assume the regulatory authority for 11e.(2) byproduct material from the Texas Department of Health Services' Texas Administrative Code (TAC) Titles 25 and 30, received by our office on August 23, 2007. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 20, 40 and 150 and the one amendment identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with you on October 29, 2007.

Per your conversation with Kathleen Schneider on October 12, 2007, we are still reviewing the technical difference presented in issue one of your letter. We will provide our position on whether the implementation of 30 TAC § 336.1135, as described in your August 23, 2007 letter, meets the Compatibility Category H&S designation in a separate correspondence. We have no comments on the minimum qualifications for radiation safety officers, as incorporated into the proposed 30 TAC § 336.1109.

As a result of our review of the remaining proposed regulations, we have four comments that have been identified in the enclosure. Please note that we have limited our review to regulations required for compatibility and/or health and safety. Under our current procedure, a finding that the TCEQ regulations meet the compatibility and health and safety categories of the equivalent NRC regulation may only be made based on a review of the final TCEQ regulations. However, we have determined that if your proposed regulations were adopted, incorporating our comments and without other significant change, they would meet the compatibility and health and safety categories established in the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA-200.

We request that when the proposed regulations are adopted and published as final regulations, a copy of the "as published" regulations be provided to us for review. As requested in FSME Procedure SA-201, "Review of State Regulatory Requirements," please highlight the final changes, and provide a copy to Division of Materials Safety and State Agreements, FSME.

The SRS Data Sheet summarizes our knowledge of the status of other TCEQ regulations, as indicated. Please let us know if you note any inaccuracies, or have any comments on the information contained in the SRS Data Sheet. This letter, including the SRS Data Sheet, is posted on the FSME website: <http://www.hsrdr.gov/nrc/rulemaking.htm>.

If you have any questions regarding the review results, the compatibility and health and safety categories, or any of the NRC regulations used in the review, please contact Kathleen Schneider, State Regulation Review Coordinator at 301-415-2320 (email: kxs@nrc.gov) or Linda McLean at (817) 860-8116 (email: mlm1@nrc.gov).

Sincerely,

IRA By ADWhite For

Robert J. Lewis, Deputy Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials and
Environmental Management Programs

Enclosures:
As stated

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Enclosures:
As stated

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COMPATIBILITY COMMENTS ON TEXAS FINAL REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	30 TAC 336.1105	§ 40.4	n/a	B	<p>Definitions: Unrefined and unprocessed ore</p> <p>Texas included “solution extracting” in the definition of “Unrefined and unprocessed ore.”</p> <p>Texas needs to delete solution extracting from their definition of “Unrefined and unprocessed ore” in 30 TAC 336.1105 to meet the Compatibility Category B designation assigned to this definition in 10 CFR 40.</p>
2	30 TAC 336.1105	Part 40 Appendix A	n/a	A	<p>Appendix A: Definitions</p> <p>Texas CEQ definition of “Existing portion” in 30 TAC 336.1105 did not include “on which significant quantities of uranium or thorium byproduct materials.”</p> <p>Texas CEQ needs to add this language to the definition of “Existing portion” in 30 TAC 336.1105 to meet the Compatibility Category A assigned to the definitions of 10 CFR 40 Appendix A.</p>
3	30 TAC §336.1129	40 Appendix A Criterion 6(6)	1999-1		<p>Appendix A, Criterion 6(6)</p> <p>Texas does not provide a course of action if the dose measured is greater than the limit. Texas has not included the method to calculate the averaged benchmark dose when there is a presence of many isotopes. This requirement mandates a proposed course of action should benchmark dose be exceeded and outlines a method for dose calculation should more than one isotope be present.</p> <p>Texas needs to add the dose requirements to 30 TAC §336.1129 to meet the Compatibility Category C designation assigned to Section 10 CFR 40 Appendix A Criterion 6(6).</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
4	30 TAC §336.1133	40 Appendix A Criterion 5	n/a	C	<p>Appendix A: Technical Requirements, Criterion 5</p> <p>Texas CEQ did not include uranium and thorium byproduct material in the technical requirement related to groundwater protection.</p> <p>Texas CEQ needs to add uranium and thorium byproduct material in the technical requirement relating to groundwater protection to meet the Compatibility Category C designation assigned to the Technical Requirements in 10 CFR 40 Appendix A.</p>

STATE REGULATION STATUS

State: Texas Commission on Environmental Quality
(1 Amendment reviewed is identified by a ★
at the beginning of each equivalent NRC regulation.)

Tracking Ticket Number: 7-66
Date: November 1, 2007

NRC Chronology Identification	FR Notice (Date Due For State Implementation)	RATS ID	Proposed (P) / Final (F) ¹ Rule / License Condition (LC) ML # ⁵	NRC Review / Y, N ² / Date / ML # ⁵	Final State Regulation ¹ (Effective Date)
Safety Requirements for Radiographic Equipment-Part 34	55 FR 843; (1/10/94)	1991-1			TX DOH Responsibility
ASNT Certification of Radiographers-Part 34	56 FR 11504; (none)	1991-2			Not required ³
Standards for Protection Against Radiation-Part 20	56 FR 23360; 56 FR 61352; 57 FR 38588; 57 FR 57877; 58 FR 67657; 59 FR 41641; 60 FR 20183; (1/1/94)	1991-3	F	N 11/6/97	9/1/93
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4	F	N 1/7/98	6/5/97
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (1/27/95)	1992-1			TX DOH Responsibility
Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions- Parts 30,35	57 FR 45566; (none)	1992-2			Not required ³
Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites]-Parts 30, 40	58 FR 39628; (10/25/96)	1993-1	F	N 1/7/98	6/5/97
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715; (7/1/96)	1993-2			Not applicable SECY-95-112 ⁴
Definition of Land Disposal and Waste Site QA Program-Part 61	58 FR 33886; (7/22/96)	1993-3	F	N 1/7/98	6/5/97
Self-Guarantee as an Additional Financial Mechanism-Parts 30, 40, 70	58 FR 68726; 59 FR 1618 (none)	1994-1	F	N 1/7/98	6/5/97 Not required ³

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Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards-Part 40	59 FR 28220; (7/1/97)	1994-2	F	N 1/7/98	6/5/97
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3	F	N 1/7/98	6/5/97
Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use-Parts 30, 32, 35	59 FR 61767; 59 FR 65243; 60 FR 322; (1/1/98)	1995-1			TX DOH Responsibility
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	6 FR 7900; (3/13/98)	1995-2	F	N 1/7/98	6/5/97
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983; (3/1/98)	1995-3	F	N 1/7/98	6/5/97
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4			TX DOH Responsibility
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5	F	N 1/7 /98	6 /5/97
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6	F	N 1/7/98	6/5/97
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7			TX DOH Responsibility
10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248; 61 FR 28723 (4/1/99)	1996-1			TX DOH Responsibility
One Time Extension of Certain Byproduct, Source and Special Nuclear Materials Licenses-Parts 30, 40, 70	61 FR 1109; (none)	1996-2			Not required ³
Termination or Transfer of Licensed Activities: Recordkeeping Requirements-Parts 20, 30, 40, 61, 70	61 FR 24669; (6/17/99)	1996-3	F	N 1/7 /98	6/5/97
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-	61 FR 65120;	1997-1	F	N 11/26/01	8/30/01

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Part 20	(1/9/00)		ML012610092	ML013330250	
Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State-Part 150	62 FR 1662; (2/27/00)	1997-2			Not required ³
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3			TX DOH Responsibility
Fissile Material Shipments and Exemptions-Part 71	62 FR 5907; (none)	1997-4			Not required ³
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations-Parts 30, 34, 71, 150	62 FR 28948; (6/27/00)	1997-5			TX DOH Responsibility
Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39058; (8/20/00)	1997-6	F ML063450071	N 1/09/07 ML070090204	
Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea-Part 30	62 FR 63634; (1/02/01)	1997-7			TX DOH Responsibility
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773 (2/12/01)	1998-1	F ML063450071	N 1/09/07 ML070090204	
Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees-Parts 30, 40, 70	63 FR 29535; (none)	1998-2			Not required ³
License Term for Medical Use Licenses-Part 35	63 FR 31604; (none)	1998-3			Not required ³
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations-Part 34	63 FR 37059; (7/9/01)	1998-4			TX DOH Responsibility
Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36	63 FR 39477; 63 FR 45393; (10/26/01)	1998-5	F ML012610092	N 11/26/01 ML013330250	8/30/01
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6	F ML063450071	N 1/09/07 ML070090204	

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★Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1	P ML072390489	Y 11/01/07 ML073050232	
Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information-Part 31	64 FR 42269; (none)	1999-2			Not required ³
Respiratory Protection and Controls to Restrict Internal Exposure-Part 20	64 FR 54543; 64 FR 55525 (2/2/03)	1999-3	F ML012610092	N 11/26/01 ML013330250	8/30/01
Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1			TX DOH Responsibility
New Dosimetry Technology-Parts 34, 36, 39	65 FR 63749; (1/8/04)	2000-2			TX DOH Responsibility
Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1			TX DOH Responsibility
Revision of the Skin Dose Limit -Part 20	67 FR 16298; (4/5/05)	2002-1	F ML063450071	N 1/09/07 ML070090204	
Medical Use of Byproduct Material-Parts 20, 32, and 35	67 FR 20249; (10/24/05)	2002-2			TX DOH Responsibility
Financial Assurance for Materials Licensees – Parts 30, 40, 70	68 FR 57327; (12/3/06)	2003-1	F ML063450071	N 1/09/07 ML070090204	
Compatibility with IAEA Transportation Safety Standards and Other Transportation Safety Amendments - Part 71	69 FR 3697; (10/01/07)	2004-1			TX DOH Responsibility
Security Requirements for Portable Gauges Containing Byproduct Material - Part 30	70 FR 2001; (7/11/08)	2005-1			TX DOH Responsibility
Medical Use of Byproduct Material - Recognition of Specialty Boards - Part 35	70 FR 16336; 71 FR 1926 (4/29/08)	2005-2			TX DOH Responsibility
Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090) ⁶	70 FR 72128; (12/1/05)	2005-3	LC ML052240226	N 12/12/05 ML053420404	12/2/05

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Minor Amendments - Parts 20, 30, 32, 35, 40, and 70	71 FR 15005 (3/27/09)	2006-1			
National Source Tracking System - Serialization Requirements - Part 32 with reference to Part 20 Appendix E	71 FR 65685 (2/6/07)	2006-2			TX DOH Responsibility
National Source Tracking System - Part 20	71 FR 65865 (11/15/07) & (11/30/07)	2006-3 ⁷			TX DOH Responsibility

1. Or other generic Legally Binding Requirements.
2. (Y/N) Y means "Yes," there are comments in the review letter that the State needs to address. N means "No," there are no comments in the review letter.
3. Not required means these regulations are not required for purposes of compatibility.
4. A State need not adopt a specific regulation if the State has no licensees that would be subject to that regulation. See: "Final Policy Statement on Adequacy and Compatibility of Agreement State Programs," III.1. Time Frame for Adoption of Compatible State Regulations, p. 6, SECY-95-112, May 3, 1995.
5. ADAMS ML Number
6. By letter dated September 2, 2005, from Paul H. Lohaus, Director, Office of State and Tribal Programs, Agreement States were given 90 days to issue legally binding requirements satisfying the requirements of NRC Order EA-05-090.
7. RATS ID 2006-3 will not be considered under the Non-Common Performance Indicator "Compatibility Requirements" for IMPEP reviews until such time as the National Source Tracking System is ready for use. Revisions in the implementation date for Agreement States will be provided to the States under separate correspondence and the SRS sheet will be revised as appropriate.