December 18, 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) technical questions on construction activities in the proposed regulations to assume the regulatory authority for 11e.(2) byproduct material from the Texas Department of Health Services' Texas Administrative Code (TAC) Title 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 Part 40.32(e). We discussed our review of the regulations with you on December 18, 2007.

Since 10 CFR 40.32(e) is designated as H&S, the staff has concluded that 336.1135 as drafted meets the essential objectives of 10 CFR 40.32(e) and is therefore compatible with the NRC regulation. The staff recommends that the following changes be considered by TCEQ for clarity in its regulations (1) on the version of the environmental assessment referred to in the regulation and (2) that proceeding at the applicant's own risk includes a responsibility to remediate any areas impacted by major construction activities if the license is not issued.

1. In TAC 30 §336.1135(2), replace the phrase "issued an environmental analysis" with "issued a final environmental analysis." This change would make it clear which version of the environmental analysis would be issued at the time of the draft final license.

2. In TAC 30 §336.1135, add a new subparagraph (7) to ensure that the environment would not be left damaged if the license were denied after the applicant initiated major construction activities. An example would be: "If a license is not issued, the applicant is responsible for remediation to the pre-construction environmental conditions of areas impacted by major construction activities."

If you have any questions regarding the comments, please contact me, or William Rautzen at 301-415-7206 or by e-mail at wrr@nrc.gov.

Sincerely,

\RA By ADWhite

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

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\RA By ADWhite

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

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Linda McLean, RSAO

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