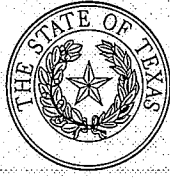


Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Bryan W. Shaw, Ph.D., *Commissioner*  
Mark G. Vickery, P.G., *Executive Director*



**Texas Commission on Environmental Quality**  
*Protecting Texas by Reducing and Preventing Pollution*

August 11, 2008

*SENT VIA ELECTRONIC MAIL*

Mr. James G. Luehman, Deputy Director  
Division Materials Safety and State Agreements  
Office of Federal and State Materials and  
Environmental Management Directory  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Dear Mr. Luehman:

The Texas Commission on Environmental Quality (TCEQ) took final action on January 30, 2008 to adopt revisions to the Radioactive Substance Rules in Title 30, Texas Administrative Code (TAC), Chapter 336 and related rules in Chapter 39, Public Notice, and Chapter 281, Applications Processing. The proposed rulemaking package reviewed by the U.S. Nuclear Regulatory Commission (NRC) contained amendments to 30 TAC Chapter 37, Financial Assurance, however at the Commissioner's Agenda, the Executive Director was directed to remove amendments to 30 TAC Chapter 37, and any references to the other amended chapters, to be addressed in Phase Two of the implementation rulemaking. Attached are the adopted rules. The final rule package was published in the February 22, 2008 issue of the Texas Register. The Texas Register can be accessed on-line at <http://www.sos.state.tx.us/texreg/pdf/backview/0222/index.shtml>. The rules became effective on February 28, 2008.

This rulemaking implemented Phase One of a rulemaking to incorporate the technical requirements for source material recovery, by-product disposal, and commercial radioactive waste storage and processing from the Texas Department of State Health Services (DSHS) rules into the TCEQ's Radioactive Substance Rules, as required by Senate Bill (SB) 1604, 80<sup>th</sup> Texas Legislature. SB 1604 transferred regulatory authority to the TCEQ for commercial radioactive waste processing, source material recovery, and by-product material disposal. SB 1604 also addresses the process and imposes aggressive deadlines for the TCEQ's continued review of a pending application submitted by Waste Control Specialists LLC (WCS) for a by-product disposal facility proposed in Andrews County.

We have incorporated all the comments cited in your November 1, 2007 letter regarding our proposed version of these regulations. Each of the comments and the TCEQ response is identified in the preamble of the final rule package published in the *Texas Register* as referenced above. In addition, the by-product license for Waste Control Specialists, LLC was issued on May 29, 2008, and no construction activities were authorized to occur prior to issuance. We believe that adoption of the attached revisions to our rules satisfies the compatibility and the health and safety categories established in the Office of Federal and State Materials and Environmental Management Directory (FSME) Procedure SA-200.

Mr. James G. Luehman, Deputy Director

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August 8, 2008

If you have any questions regarding this letter, please contact me at (512) 239-6731 or by electronic mail at [sjablons@tceq.state.tx.us](mailto:sjablons@tceq.state.tx.us).

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Jablonski". The signature is written in a cursive, flowing style.

Susan Jablonski, P.E., Director  
Radioactive Materials Division  
Texas Commission on Environmental Quality