

Bryan W. Shaw, Ph.D., *Chairman*  
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Mark R. Vickery, P.G., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

April 14, 2010

Mr. James L. Lynch, State Agreements Officer  
U.S. Nuclear Regulatory Commission  
Region III  
2443 Warrenville Road, Suite 210  
Lisle, Illinois 60532

Dear Mr. Lynch:

Thank you for your March 25, 2010 letter requesting the Texas Commission on Environmental Quality's (TCEQ) comments on the draft Integrated Materials Performance Evaluation Program (IMPEP) Review of the Texas Agreement State Program report dated February 22-26, 2010. We appreciate the opportunity to comment on the draft report.

The TCEQ has several minor comments which we believe may improve the accuracy of the report, and we have enclosed a copy of those comments. We want to thank the U.S. Nuclear Regulatory Commission IMPEP inspection team. Your comments and suggestions will help us improve our program in the future.

If you have any questions regarding our comments, please feel free to contact Ms. Susan Jablonski, P.E., Director of the Radioactive Materials Division, at 512-239-6731.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark R. Vickery".

Mark R. Vickery, P.G.  
Executive Director

Enclosure

cc: Kathryn Perkins, Assistant Commissioner, Division of Regulatory Services,  
Texas Department of State Health Services  
Roger Mulder, State Liaison Officer, Texas State Energy Conservation Office  
Richard Ratcliff, Radiation Safety Licensing Manager, Division for Regulatory  
Services, Texas Department of State Health Services

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**ATTACHMENT**

**Comments on the February 22-26, 2010 Draft Report,  
Integrated Materials Performance Evaluation Program  
Review of Texas Agreement State Program**

	<b>Comment</b>
<b>SECTION</b>	<b>NON-COMMON PERFORMANCE INDICATORS</b>
4.1.1	<p>Legislation: Respectfully request to revise wording for clarification purposes beginning in the first paragraph:</p> <p>The Commission has the jurisdiction to license and regulate the disposal of radioactive materials, the recovery and processing of source material, the processing of tailings or waste produced by or resulting from the extraction or concentration of uranium or thorium from ore (11.e.(2) byproduct material as defined in the Atomic Energy Act, as amended), the <b><i>commercial</i></b> processing or storage of <del>low-level</del> radioactive waste, and sites for the disposal of low-level radioactive waste and byproduct material. The Commission is also <del>directly</del> affected by the Texas Low-level Radioactive Waste Disposal Compact, Chapter 403 of the Texas Health and Safety Code. Each agency was indirectly affected by many other Texas rules and legislation.</p> <p>The jurisdictional areas noted above are different than those noted during the last IMPEP review. The changes were the result of Texas Senate Bill 1604, which was passed in the Texas 80<sup>th</sup> Legislature in 2007. This bill amended the Texas Radiation Control Act and transferred licensing and regulatory jurisdiction from the Department to the Commission for the recovery and processing of source material, 11.e.(2) byproduct material disposal, and <b><i>commercial</i></b> processing or storage of <del>low-level</del> radioactive waste. As a result of these changes, certain sections of the Department’s regulations in 25 Texas Administrative Code Chapter 289 were repealed and these matters were <b><i>primarily</i></b> incorporated into Commission’s regulations in 30 Texas Administrative Code Chapter 336.</p> <p>The Department and the Commission (as the former Texas Natural Resource</p>

	<p>Conservation Commission) developed and implemented a Memorandum of Understanding (MOU) in 1996, which was revised in 1998. The MOU specified the respective responsibilities of the two agencies and stated that the Department and Commission agreed to work together to ensure that complete regulation is maintained for sources, uses, and users of radiation. The MOU also addressed certain operational functions of the two agencies, such as emergency preparedness, instrument calibration, and mutual assistance. The review team noted that the MOU was outdated and did not reflect the current jurisdictions or responsibilities of the two agencies. References to the MOU were retracted from the Commission's regulations although the MOU is still in statute in the Department's regulations under 25 Texas Administrative Code 289.101. The review team encouraged the two agencies to work together to revise the MOU. <b><u>Both agencies reported that they are planning to revise the MOU once approval is granted to begin rulemaking.</u></b></p>
4.1.2	<p>Program Elements Required for Compatibility: Respectfully request to revise wording for clarification purposes in the sixth paragraph:</p> <p>The Commission has one regulatory package that is overdue. The RATS Identification for the regulatory package addresses rules that pertain to both the Department and the Commission. The Department has submitted their rules to NRC and they were returned to the Department with comments. The Commission still needs to address the rules that pertain to the Commission. Commission representatives indicated that they will be processing a rulemaking package beginning in the Fall of 2010. This rulemaking will address <del>fee-setting</del> <b><u>other pending rules</u></b> and will also address any changes to the rules necessary as part of the overdue regulatory package. It is expected that the rulemaking will be completed <del>by early</del> <b><u>in</u></b> 2011.</p>
4.3.1	<p>Technical Staffing and Training: Respectfully request to revise wording for clarification purposes beginning in the third paragraph:</p> <p><del>The program shifted from the Department to the Commission in 2007. Several Department staff transferred with the program. (Note: As of July 1, 2007, the regulatory jurisdiction of the uranium recovery program was transferred to the Radioactive Material Division in the Commission.) Five</del> <b><u>Four</u></b> staff associated with the LLRW program left the program during the review period. <del>The Commission hired eight new staff since the program moved.</del></p>

	<p>Within the Commission, the licensing group is <b><i>has been recently</i></b> segregated from the inspectors. Licensing occurs within Office of Permitting &amp; Registration, Radioactive Materials Division, Radioactive Material Licensing Section. The inspectors are located in the Office of Compliance and Enforcement, Homeland Security Program. As identified in earlier sections of this report, organizing by functional groups rather than by program, requires significant emphasis on communication between licensing and inspection staffs to achieve an effective regulatory program.</p> <p>The review team examined the <del>limited</del> training records of the staff and found them up to date and complete, although the Commission does not have a documented training and qualification program for staff performing LLRW licensing or inspections. Section managers use professional judgment to certify when staff is “qualified.” The review team spoke to the Commission managers about the benefits to the program and staff for a well-documented training program including training journals and sign-off sheets.</p> <p>The review team determined that the current staff has the right mix of technical expertise and is adequate to maintain the quality and performance of the LLRW program. Through interviews with the professional staff and program managers, combined with an evaluation of training and experience, the review team concluded that the LLRW <b><i>Commission</i></b> staff is qualified to carry out regulatory duties for licensing and inspecting of the LLRW site. Managers are attempting to build depth in their programs. At the time of the review, only one of the four LLRW inspectors was fully qualified <b><i>by experience and training.</i></b> (Note: Please provide criteria used for the qualification determination in this section as well as Section 4.4.1, Technical Staffing and Training)</p>
4.3.2	<p>Status of Low-level Radioactive Waste Disposal Inspection: Respectfully request to revise wording for clarification purposes in the second paragraph:</p> <p>LLRW program staff visited the disposal site several times before and since the license was issued. Staff performed pre- and post-licensing soil and water sampling and environmental TLD monitoring. In addition, when health physics investigators inspected the co-located processing and storage facility, they routinely observed activities at the <b><i>planned</i></b> LLRW disposal site.</p>

4.3.4	<p>Technical Quality of Licensing Actions: Respectfully request to revise wording for clarification purposes in the second paragraph:</p> <p>Following the completion of the technical review, the Commission conducted a public meeting in Andrews, Texas, and opened a 30-day period to receive public comments and <del>to request a</del> <u>requests for a</u> public hearing on the application.</p>
4.4	<p>Uranium Recovery Program: Respectfully request to revise wording for clarification purposes in the third paragraph:</p> <p>In 2009, the Commission further reorganized such that (a) inspections for uranium recovery program licenses and UIC permits were performed by <u>transferred</u> personnel in the Homeland Security Program (under a separate office at the Commission) and (b) the UIC Permits team was moved from another section within the Office of Permitting &amp; Registration to the Radioactive Material Division.</p>



Office of Public Assistance, MC 108  
Texas Commission on  
Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

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JAMES L LYNCH  
US NUCLEAR REGULATORY COMMISSION  
REGION III  
2443 WARRENVILLE RD, SUITE 210  
LISLE, ILLINOIS 60532

BA\*QS31 60532

