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

February 16, 2016

Pamela Henderson, Deputy Director
Division Material Safety, State, Tribal,
and Rulemaking Programs
Office of Nuclear Material Safety
and Safeguards
U.S. Nuclear Regulatory Commission
T8-E18
Washington, D.C. 20555-0001

Dear Ms. Henderson:

We have received your letter dated January 13, 2016 concerning the NRC review of proposed rulemaking of Title 30 of the Texas Administrative Code (TAC) Chapter 336 Radioactive Substance Rules by the Texas Commission on Environmental Quality (TCEQ) which was submitted to the NRC in a letter received by your office on November 17, 2015. As a result of the NRC review, 12 comments related to compatibility and one comment not related to compatibility were identified that required TCEQ to modify its proposed rules. Please note that these comments were received after the proposed rulemaking was adopted and thus we were not able to modify the proposed rules in accordance with the comments in the January 13, 2016 letter.

We are preparing a new rulemaking to incorporate the comments from your January 13, 2016 letter along with other modifications due to other NRC rule changes as stated in the RATS. We believe that this pending proposed rulemaking will satisfy the compatibility and health and safety categories as identified in the January 13, 2016 letter and will submit a copy of the proposed rules for review by the NRC. Consequently, we will not be submitting a copy of the adopted rules for the rulemaking identified in the letter from TCEQ received by the NRC on November 17, 2015.

In lieu of the ongoing rulemaking, and in order to satisfy NRC requirements regarding the deadline for Agreement State compatibility related to Part 37, please consider the enclosed proposed license condition, which will replace the current license condition 207.E, for radioactive material license RO4100 for the low level radioactive waste disposal facility through which the TCEQ will impose those revised requirements, along with the recently adopted 30 TAC §336.357, on the only applicable licensee. Also attached is amendment 29 of license RO4100 and Subchapter D of 30 TAC §336.

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We are requesting that the NRC review the proposed license condition 207.E by February 24, 2016 so that the license can be amended before March 19, 2016. The current license condition was modified in license amendment 28, issued January 30, 2015, to remove the reference to the NRC order EA-07-305 after NRC adopted this order into Part 37. We have been informed that the current license condition does not meet compatibility requirements.

If you have any questions, please feel free to contact me at 512-239-5308 or Bobby Janecka of my staff at 512-239-6415 or Bobby.Janecka@tceq.texas.gov.

Sincerely,



Charles Maguire, Division Director
Radioactive Materials Division
Texas Commission on Environmental Quality

Attachment: Radioactive material license RO4100
Proposed license condition 207.E
Subchapter D of 30 TAC §336

CWM/HW