

DATED: JUNE 16, 1992; SIGNED BY: CARLTON KAMMERER

David R. Smith, M.D.  
Commissioner  
Texas Department of Health  
1100 West 49th Street  
Austin, TX 78756

Jesus Garza, Executive Director  
Texas Water Commission  
1700 North Congress Avenue  
Austin, TX 78711

Dear Dr. Smith and Mr. Garza:

This confirms the discussion Mr. Robert J. Doda held with Dr. Robert A. MacLean and Mr. David K. Lacker on March 27, 1992, following our review and evaluation of the Texas radiation control program. Another NRC staff member attending this meeting was Mr. Richard L. Blanton, Office of State Programs.

As a result of our review of the State's program and the routine exchange of information between the NRC and the State of Texas, the staff believes that the Texas program for the regulation of agreement materials is adequate to protect public health and safety and compatible with NRC's program for regulation of similar materials. However, this finding of compatibility is contingent upon the State's adoption of the "decommissioning" rule.

A significant effort was applied during the review to understand and become familiar with the new organization for the Texas radiation control program wherein, on March 1, 1992, primary regulatory responsibility for the disposal of uranium mill tailings and low-level radioactive waste was statutorily assigned to the Texas Water Commission (TWC). The rest of the 274b agreement materials program remained with the Texas Department of Health (TDH)

Accordingly, in the future, NRC will conduct one review encompassing both agencies and make one determination as to the adequacy and compatibility of the State of Texas program for administering the NRC's 274b agreement. We expect that both agencies will coordinate a combined response to issues which evolve during future reviews of the Texas program.

Essentially, this year's review covered only the past activities of the TDH's radiation control program. However, in order to establish an assurance of program continuity for the radioactive materials covered under the 274b agreement, we ask that the TWC address the following listed questions relating to radioactive materials that are now the responsibility of the TWC.

- (1) Describe how TWC enforces the statutory requirements of the Texas Radiation Control Act (Chapter 401)?

- (2) What is the plan to have compatible regulations in place after the period of emergency adoption of the TDH's regulations as noted in 17 Tex Reg 2241, dated March 27, 1992?
- (3) What written agreement is available to ensure the proper coordination between the TWC and the TDH for all materials covered under the 274b agreement with the NRC?
- (4) What regulatory plan will be used for the review of the low level radioactive waste disposal facility in Texas, and who is the project manager for this licensing action?

We believe the transfer of authorities to the TWC should be evaluated by the NRC sometime after the TWC has initiated its regulatory program for radioactive waste material in Texas. Accordingly, the NRC plans to conduct a follow up review of the TWC's radiation control program for agreement materials in approximately 6-8 months.

Enclosure 1 contains our technical comments from this year's review regarding the program, and you may wish to have Mr. Lacker respond directly to these comments. We would like to call to your attention one comment (Enclosure 1, number 2) for which the TDH has primary responsibility. It concerns legal support to the radiation control program regarding hearings and certain escalated enforcement actions.

Our review disclosed that most other program indicators were within NRC guidelines. Also, a number of other technical matters were discussed with the radiation control staff and resolved during the course of the review meeting. This year's review used a team approach, which involved seven NRC staff members at various times during the review visit. This allowed more time for individual discussions with members of the State's radiation control staff. During the course of the review, we were able to hold meetings with both agency's staffs in nine different subject areas, which were of current interest to both the State and the NRC.

An explanation of our policies and practices for reviewing Agreement State programs is attached as Enclosure 2.

I appreciate the efforts applied by the State of Texas and the courtesy and cooperation you and your staff extended to Mr. Doda and the other NRC reviewers during the review meeting. Also, I am enclosing a copy of this letter for placement in the State Public Document Room or to otherwise be made available for review.

Sincerely,

Carlton Kammerer, Director  
Office of State Programs

Enclosures:  
As stated

cc w/encls:

J. M. Taylor, Executive Director  
for Operations, NRC  
R. D. Martin, Regional Administrator,  
Region IV  
Chairman, Texas Radiation Advisory Board  
Texas Bureau of Radiation Control,  
TDH  
D. K. Lacker, Chief  
Texas Bureau of Radiation Control,  
TDH  
Susan S. Ferguson, Director  
Industrial and Hazardous Waste  
Division, TWC  
State Liaison Officer  
NRC Public Document Room  
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David R. Smith and Jesus Garza

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### Status of Program Related to Previous NRC Findings

The previous NRC routine review was concluded on April 20, 1990, and comments and recommendations were sent to the State in a letter dated June 6, 1990. At that time, the program was found to be adequate to protect the public health and safety. Compatibility with the NRC's program for the regulation of similar materials was established in May 1991, when a radiography amendment became effective in the Texas radiation control regulations. The comments and recommendations from the previous program review were followed up and the State's responses were evaluated for adequacy. All previous comments and recommendations have been closed out.

### Current Review Comments and Recommendations

The Texas radiation control program (RCP) satisfies the Guidelines in 25 of the 29 indicators. The State did not meet the Guidelines in two Category I indicators, Status and Compatibility of Regulations and Status of Inspection Program. The comment and recommendation on regulations involves the adoption of a regulatory amendment on decommissioning, and in accordance with current NRC policy wherein the amendment is scheduled for early adoption, a finding of compatibility is offered at this time. The comment and recommendation regarding overdue inspections is of minor significance, and the State has a plan in place to address these inspections soon.

#### 1. Status and Compatibility of Regulations (Category I Indicator)

##### Comment

The review of the State's radiation control regulations disclosed that the State's regulations are compatible with the NRC regulations up to the 10 CFR Parts 30, 40, and 70 amendments on decommissioning that became effective on July 27, 1988. This decommissioning amendment is a matter of compatibility and in accordance with current NRC practice, if this particular amendment is on track for adoption by 1993, a finding of compatibility is not withheld, and the finding is of minor significance. The State has initiated rulemaking on a decommissioning rule and it is projected to become effective prior to 1993.

Other regulations also have been adopted by NRC that are matters of compatibility and these regulations need to be adopted within three years after the effective date. These regulations are identified as follows:

- "Emergency Planning Rule," 10 CFR Parts 30, 40, and 70 amendments that became effective on April 7, 1990.
- "Safety Requirements for Radiographic Equipment," 10 CFR Part 34 amendment that became effective on January 10, 1991.
- "Standards for Protection Against Radiation," 10 CFR Part 20 amendment that became effective on June 20, 1991.

- "Notification of Incidents," 10 CFR Parts 20, 30, 31, 34, 39, 40, and 70 amendments that became effective on October 15, 1991.
- "Quality Management Program and Misadministrations," 10 CFR Part 35 amendment that became effective on January 27, 1992.

#### Recommendation

We recommend that the proposed amendment to the Texas regulations on decommissioning be adopted as soon as possible, and that the other regulations needed for compatibility also be promulgated as effective State Radiation Control regulations within the three year period allowed by NRC policy criteria.

### 2. Legal Assistance (Category II Indicator)

#### Comment

Legal staff should be assigned to assist the radiation control program or procedures should exist to obtain legal assistance expeditiously. During the review period, the Bureau had adequate availability of a legal staff of three attorneys in the TDH. These attorneys were knowledgeable regarding the radiation control program, the statutes, and the regulations. In March 1992, two out of these three attorneys were transferred to the TWC along with the transfer of certain responsibilities for radioactive waste disposal. While our review disclosed no serious shortfall in the availability of legal assistance for the Bureau, we believe the potential exists for just such a shortfall in the future.

#### Recommendation

We recommend the TDH and the TWC monitor the need for legal staff in the Bureau for escalated enforcement actions, regulations development, and other statutory requirements and arrange for the continuing availability of a knowledgeable legal staff for all radiation control matters.

### 3. Status of Inspection Program (Category I)

#### Comment

Our review disclosed that 36 priority 1 and 2 licenses were overdue for inspection by more than 50 percent of the inspection frequency. This comment is of minor significance since the Bureau has a plan in place for the early elimination of this backlog. All of these inspections are scheduled to be inspected by the end of May 1992. The Bureau is just completing an outstanding effort at bringing all overdue inspections up-to-date (2390 inspections were completed during the review period).

Recommendation

We recommend that Bureau management complete this minor backlog.

4. Administrative Procedures (Category II Indicator)

The Texas Bureau of Radiation Control has all the information pertaining to sureties in a well organized and easily retrievable format. Personnel involved in surety reviews were well informed of the status of each licensee's surety, although they were without financial training in the management of a surety program. A majority of the surety arrangements are of an insufficient amount according to current NRC criteria.

a. Comment

Six of the 20 uranium recovery facilities required to post a financial security have a form of surety which is acceptable under NRC criteria. The remaining 14 facilities gave what the State calls a "performance bond," which is actually a form of self-insurance. This form of surety is not accepted under current NRC practice, because it provides no additional financial security other than that which already exists under the license requirements. The Bureau staff has recognized the inadequacy of these "performance bonds" and has communicated the need to replace them with an acceptable form of surety to the licensee. In a number of cases, the costs of reclamation are decreasing as restoration efforts continue. While there has been some progress in this area, most of the facilities adhere to these "performance bonds" as a measure of financial security. We recognize the status of a certain number of these facilities as nearing completion of reclamation/restoration and the attendant reduction in disposal costs as reclamation progresses. Nonetheless, the staff should prioritize those facilities in an active status and attempt to upgrade the form of surety where possible.

Recommendation

We recommend as part of the annual surety review process and wherever possible, that the State direct the licensees with "performance bonds" to propose an alternative surety arrangement in an acceptable form.

b. Comment

The majority of reclamation/restoration cost estimates for the uranium recovery facilities are based on outdated plans which contain insufficient detail and may not meet current site closure criteria. In some cases, license renewals have occurred without updating the reclamation plans or cost estimates. We note that the Bureau staff has sought changes in reclamation plans and the

associated cost estimates. Licensees can be required to update reclamation/restoration plans and cost estimates prior to renewal of a license.

Recommendation

We recommend that wherever possible, the license renewal process be utilized to update both the reclamation/restoration plans and the associated cost estimates.

c. Comment

Contaminated waste disposal costs for many of the in situ licensees are based on a previous assumption of disposal at the Conoco-Conquista facility. Since this option is no longer available, costs must be adjusted to account for disposal of contaminated material at another available licensed facility.

Recommendation

We recommend that the annual surety review process be utilized to require that waste disposal costs be updated to reflect actual disposal costs at an available licensed facility.

Summary Discussions With State Representatives

A summary meeting to present the results of the regulatory program review was held with Dr. Robert MacLean, Deputy Commissioner; and David K. Lacker, Chief, Bureau of Radiation Control, Department of Health, on March 27, 1992. The scope and findings of the review were discussed.

Dr. MacLean was informed of the significance of the two Category I findings regarding the regulations and the overdue inspections. In reply, Dr. MacLean related that the State would address the decommissioning regulation in an early revision to the State's regulations. He also expressed the State's appreciation for past NRC assistance and training for the Bureau staff. He said the Department will continue to support the radiation control program, any NRC-sponsored training courses, and cooperative efforts with the NRC and Other Agreement State Programs.

Dr. MacLean was also informed of a possible decision by NRC's Office of State Programs to hold a followup review, within a few months, of the TWC's program for regulating agreement materials (radioactive waste materials) which are now under the regulatory responsibility of the TWC.

Application of "Guidelines for NRC Review  
of Agreement State Radiation Control Programs"

The "Guidelines for NRC Review of Agreement State Radiation Control Programs," were published in the Federal Register on June 4, 1987, as an NRC Policy Statement. The Guidelines provide 29 indicators for evaluating Agreement State program areas. Guidance as to their relative importance to an Agreement State program is provided by categorizing the indicators into 2 categories.

Category I indicators address program functions which directly relate to the State's ability to protect the public health and safety. If significant problems exist in several Category I indicator areas, then the need for improvements may be critical.

Category II indicators address program functions which provide essential technical and administrative support for the primary program functions. Good performance in meeting the guidelines for these indicators is essential in order to avoid the development of problems in one or more of the principal program areas, i.e., those that fall under Category I indicators. Category II indicators frequently can be used to identify underlying problems that are causing, or contributing to, difficulties in Category I indicators.

It is the NRC's intention to use these categories in the following manner. In reporting findings to State management, the NRC will indicate the category of each comment made. If no significant Category I comments are provided, this will indicate that the program is adequate to protect the public health and safety and is compatible with the NRC's program. If one or more significant Category I comments are provided, the State will be notified that the program deficiencies may seriously affect the State's ability to protect the public health and safety and that the need of improvement in particular program areas is critical. If, following receipt and evaluation, the State's response appears satisfactory in addressing the significant Category I comments, the staff may offer findings of adequacy and compatibility as appropriate or defer such offering until the State's actions are examined and their effectiveness confirmed in a subsequent review. If additional information is needed to evaluate the State's actions, the staff may request the information through follow-up correspondence or perform a follow-up or special, limited review. NRC staff may hold a special meeting with appropriate State representatives. No significant items will be left unresolved over a prolonged period. The Commission will be informed of the results of the reviews of the individual Agreement State programs and copies of the review correspondence to the States will be placed in the NRC Public Document Room. If the State program does not improve or if additional significant Category I deficiencies have developed, a staff finding that the program is not adequate will be considered and the NRC may institute proceedings to suspend or revoke all or part of the Agreement in accordance with Section 274j of the Act, as amended.

Enclosure 2