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April 18, 2014

Mr. Richard Hyde
Executive Director
Texas Commission on Environmental Quality
PO Box 13087
Austin, Texas 78711-3087

Re: Petition for Rulemaking pursuant to Section 401.051, *Health and Safety Code*

Dear Mr. Hyde:

This rulemaking petition is submitted on behalf of Uranium Energy Corp. (UEC), 500 North Shoreline, Suite 800N, Corpus Christi, Texas 78401 pursuant to, *inter alia,* Section 401.051 *Health and Safety Code*. UEC requests that the Texas Commission on Environmental Quality (TCEQ) amend 30 TAC Section 336.1111(1)(H) related to Special Requirements for a License Application for Source Material Recovery and By-product Material Disposal Facilities to reflect that the *in situ* Uranium mining entities, under certain circumstances, are not subject to 30 TAC Section 336.1111(1)(H).

BACKGROUND (30 TAC Section 20.15(a)(3)(A)

SB 1604, 80th Legislature, transferred jurisdiction for this program to the TCEQ. On January 30, 2008, the TCEQ adopted, among other rules, 30 TAC 336.1111(1)(H) which requires that an application include an acknowledgement from a landowner that the landowner consents to the application authorizing source material recovery and by-product disposal. In adopting this rule, the TCEQ disagreed with a comment that this presented a new burden on applicants that was not in Texas State Department of Health Services' regulations. Whether the adoption of 30 TAC Section 336.1111(1)(H) added a new requirement may be debatable but UEC does not wish to argue that point. Instead, UEC believes that 30 TAC Section 336.1111(1)(H) puts *in situ* Uranium miners and mineral interest holders in a difficult if not untenable, position.

The primary issue is that the rule is counter to Texas Mineral Law. That is, in Texas, the mineral estate generally is superior to the surface estate. However, 30 TAC Section 336.1111(1)(H) puts an affirmative requirement on applicants to obtain surface owner consent to an application. Should a surface owner refuse to consent, the application cannot be granted and the mineral interest owner and the *in situ* Uranium miner will both be prohibited from exercising their right to operate according to prevailing mineral law.

UEC acknowledges that there might be situations where requiring landowner consent may be advisable. Such circumstances might be where there is going to be disposal of radioactive materials or operations that receive, process or dispose of radioactive materials on property owned by someone other than the applicant. However, when focused on actual *in situ* Uranium mining, a consent requirement is a counter-productive burden to the industry. *In situ* Uranium mining does not involve facilities for receipt, processing, storage or disposal of radioactive materials from third parties.

TEXT OF PROPOSED RULE (30 TAC Section 20.15(a)(3)(B)

UEC's suggestion is quite simple—add a subsection in 336.1111(1)(H) that excludes *in situ* Uranium operations. Thus, the amended rule would read as follows:

§336.1111. Special Requirements for a License Application for Source Material Recovery and By-product Material Disposal Facilities.

In addition to the requirements in §336.1109 of this title (relating to General Requirements for the Issuance of Specific Licenses), a license may be issued if the applicant submits the items in paragraph (1) of this section for agency approval and meets the conditions in paragraphs (2) and (3) of this section. In situ uranium operations that do not receive, process or engage in on-site disposal of radioactive materials from third parties are not subject to subsection H(1).

(1) An application for a license must include the following:

(A) for new licenses, an environmental report that includes the results of a one-year preoperational monitoring program and for renewal of licenses, an environmental report containing the results of the operational monitoring program. Both must also include the following:

(i) description of the proposed project or action;

(ii) area/site characteristics including ecology, geology, topography, hydrology, meteorology, historical and cultural landmarks, and archaeology;

(iii) radiological and nonradiological impacts of the proposed project or action, including waterway and groundwater impacts and any long-term impacts;

(iv) environmental effects of accidents;

(v) by-product material disposal, decommissioning, decontamination, and reclamation and impacts of these activities; and

(vi) site and project alternative;

(B) a closure plan for decontamination, decommissioning, restoration, and reclamation of buildings and the site to levels that would allow

unrestricted use and for reclamation of the by-product material disposal areas in accordance with the technical requirements of §336.1129 of this title (relating to Technical Requirements);

(C) proposal of an acceptable form and amount of financial security consistent with the requirements of §336.1125 of this title (relating to Financial Security Requirements);

(D) procedures describing the means employed to meet the requirements of §336.1113(1) and (2) of this title (relating to Specific Terms and

Conditions of Licenses) and §336.1129(o) of this title during the operational phase of any project;

(E) specifications for the emissions control and disposition of the by-product material; and

(F) for disposal of by-product material received from others, information on the chemical and radioactive characteristics of the wastes to be received, detailed procedures for receiving and documenting incoming waste shipments, and detailed waste acceptance criteria.

(G) an adequate operating, radiation safety, and emergency procedures manual; and

(H) a signed certification from the owner or owners of the real property on which radioactive substances are recovered, stored, processed, or disposed acknowledging that:

(i) radioactive substances are recovered, stored, processed or disposed on the property with the consent of the property owner or owners; and

(ii) decommissioning of the licensed site may be required even if the applicant or licensee is unable or fails to decommission the licensed site as required by a license, rule or order of the commission;

(iii) this subsection does not apply to persons or entities required to obtain authorization for a production area within the boundary of a Class III UIC permit for *in situ* uranium mining.

STATUTORY AUTHORITY (30 TAC Section 20.15(a)(3)(C)

401.011, 401.051 and/or 401.104 *Health and Safety Code* and 5.103, *Water Code*, authorize this rulemaking.

INJURY OR INEQUITY FROM FAILURE TO ADOPT PROPOSALS (30 TAC Section 20.15(a)(3)(D)

Failure to adopt this proposal could result in inequity or injury to an applicant. The injury or inequity is that a landowner with no interest in the project could successfully stifle the project or force the mining entity to pay exorbitant prices for such consent. Either way, it seems inconsistent with other areas of Texas mineral law that a mining operation must first obtain consent from the landowner before a license will be granted.

UEC appreciates the TCEQ's attention and consideration of this request. We are happy to meet with you or the proper staff at your convenience.

Very truly yours,

Andrew N. Barrett