

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE TEXAS DEPARTMENT OF HEALTH  
AND  
THE TEXAS WATER COMMISSION

CONCERNING THE REGULATION AND MANAGEMENT OF  
RADIOACTIVE MIXED WASTES

The purpose of this Memorandum of Understanding (MOU) between the Texas Department of Health (TDH) and the Texas Water Commission (TWC) is to implement and coordinate the requirements of the agencies in their licensing and permitting programs, to provide a consistent approach to licensing and permitting, to avoid duplication of efforts, and to institute an integrated approach for licensing and permitting of wastes that contain radioactive wastes subject to the federal Atomic Energy Act (AEA) of 1954, as amended, 42 United States Code (U.S.C.) §2011 et seq., and hazardous wastes subject to the federal Resource Conservation and Recovery Act (RCRA) of 1976, as amended, 42 U.S.C. §6901 et seq., referred to in this document as "radioactive mixed wastes."

The TDH has primary jurisdiction to regulate and license the handling, transfer, transport, storage and disposal of radioactive materials under the Texas Radiation Control Act (TRCA), Texas Civil Statutes, Article 4590f. The TDH evaluates the impact of sources of radiation on occupational and public health and safety and the environment and, after consultation with appropriate state agencies, adopts rules to limit radiological contamination of surface water and groundwater.

The TWC is the state agency having jurisdiction over the management of industrial solid waste and hazardous waste under the Texas Solid Waste Disposal Act (TSWDA), Texas Civil Statutes, Article 4477-7. Under the Texas Water Code, Chapter 26, the discharge of any waste into or adjacent to water in the state, including groundwater, is prohibited unless authorized by the TWC or by another state agency having jurisdiction over the activity.

The regulation and management of waste streams containing both "source," "special nuclear," or "by-product material" (as defined by the AEA) and solid wastes that are defined as "hazardous waste" by the Administrator of the United States Environmental Protection Agency (EPA) under RCRA (referred to in this document as "radioactive mixed wastes") are subject to the TDH requirements pertaining to radioactive waste and to the TWC requirements pertaining to hazardous waste. As set forth in the TSWDA, Article 4477-7, §3(d), the TDH is designated under the TRCA, Article 4590f, as the state agency with respect to regulating radioactive waste activities that are not preemptively regulated by the federal government. The TWC has all powers necessary or convenient to carry out responsibilities concerning the regulation of the management of hazardous waste components of any radioactive wastes under the jurisdiction of the TDH. This document evidences the agreement of the agencies to establish and maintain a cooperative working arrangement for the regulation of the components of radioactive mixed wastes subject to each agency's jurisdiction.

Recognizing that, at the federal level, regulation and disposal of naturally occurring and accelerator-produced radioactive material (NARM) is not subject to the AEA and is not presently addressed by regulations of the EPA, the TDH and TWC agree that NARM will be regulated in this state as any other radioactive material and that NARM mixed with hazardous waste will be regulated as

radioactive mixed waste.

The TDH and the TWC agree that the roles and responsibilities of each agency in the management and regulation of radioactive mixed wastes are as described in this document.

1. The TDH shall have sole responsibility for licensing and enforcement activities for low-level radioactive wastes that do not contain hazardous waste components.

2. The TDH shall have primary responsibility for licensing and enforcement activities for the radioactive components of radioactive mixed wastes. The TDH will review such items as the applicant's facility siting, design, construction, operation, maintenance, and closure plans, and the applicant's health physics program to ensure that they meet applicable TDH standards.

3. The TWC shall have primary responsibility for permitting and enforcement activities for the hazardous waste components of radioactive mixed wastes. The TWC will review such items as the applicant's facility siting, design, construction, operation, recordkeeping, maintenance, and closure plans to ensure that they meet applicable TWC standards.

4. Each agency shall encourage applicants to attend a preapplication meeting with representatives from each agency in attendance.

5. The TDH shall have primary responsibility for enforcement of the conditions of its licenses, orders, and rules. The TWC shall have primary responsibility for enforcement of the conditions of its permits, regulations, orders, and rules. Each agency will refer to the other agency any complaints received which are the primary responsibility of the other agency. When deemed appropriate by both agencies, the TWC and the TDH may jointly enforce permit and license terms and conditions; may hold joint public hearings; and may make joint inspections and cooperate on enforcement actions. Representatives of each agency shall make joint inspections of radioactive mixed waste units whenever the collective expertise of each agency is desirable. Nothing herein shall preclude either agency from individual enforcement or legal actions. Decisions will be made by the appropriate separate authorities, as provided by law.

6. The TDH will regulate NARM as provided for in the Texas Regulations for Control of Radiation (TRCR).

7. Areas of inconsistency between the technical requirements of rules promulgated pursuant to the AEA and the technical requirements of rules promulgated pursuant to the RCRA shall be identified and resolved by the agencies after consultation with the United States Nuclear Regulatory Commission (NRC) and the Administrator of the EPA. As mandated by the TSWDA, §3(d), the TWC shall consult with the TDH with regard to regulation and management of radioactive waste and may not adopt any rules or engage in any management activities that are in conflict with state or federal laws and rules relating to regulation of radioactive waste.

8. TDH licenses regarding facilities having radioactive mixed waste units shall contain a provision that licensees must comply with TWC permit requirements. TWC permits governing facilities having radioactive mixed waste units shall contain a provision that permittees must comply with TDH license requirements.

9. The TWC will continue to require reporting of all spills under the agency's jurisdiction in accordance with applicable regulations and the State of Texas Oil and Hazardous

Substances Spill Contingency Plan. The TDH will require reporting of spills under the agency's jurisdiction pursuant to the TRCR.

10. The TWC will be the agency responsible for regulating discharges into or adjacent to any water in the state under the Texas Water Code, Chapter 26. The TDH shall set concentration limits for the radioactive components of such discharges.

11. Requirements for financial security for decontamination, decommissioning, stabilization, reclamation, surveillance, control, storage, disposal, long-term care, and maintenance of the radioactive components of radioactive mixed wastes to specified radiological levels shall be established by the TDH.

12. The TWC will require financial assurance for the hazardous waste components of radioactive mixed wastes pursuant to the TWC regulations governing hazardous waste in 31 Texas Administrative Code Chapter 335.

13. Technical staffs of the TWC and the TDH will cooperate so that their highest level of technical expertise will be available to assess environmental impacts and enforce the agencies' mandates. The agencies will also coordinate their technical reviews of materials submitted by applicants to satisfy the regulatory requirements imposed by both agencies. The Bureau of Radiation Control has trained staff members with the experience and expertise necessary to ensure that proper procedures will be followed to eliminate any radioactive exposure hazard that might be posed to state inspectors during site inspections of radioactive mixed waste units. The TWC has trained staff members with the experience and expertise necessary to ensure that proper procedures will be followed to eliminate hazards that might be posed by exposure to hazardous wastes.

14. In the event that financial security or assurances deposited in the Radiation and Perpetual Care Fund as provided herein are required for decontamination, decommissioning, stabilization, reclamation, long-term care, maintenance, and surveillance of the site, and control, storage, and disposal of radioactive mixed wastes, the TDH, in agreement with the TWC, may contract to accomplish these activities. Payment for such contract services may be made from the Radiation and Perpetual Care Fund upon order of the TDH when the contract terms are satisfactorily completed. In the event that financial assurance required pursuant to TWC regulations is needed for closure, post-closure care, corrective action or other facility maintenance or remedial activities, the TWC, in agreement with the TDH, may contract to accomplish these activities.

15. The TWC and the TDH agree to review and revise their respective rules and procedures as needed to implement this MOU.

16. Agency representatives shall meet at least annually to discuss changes in this MOU and to encourage increased communication between the agencies.

17. Nothing in this MOU shall be construed to reduce the statutory jurisdiction of either agency.

18. If any provision of this MOU is held to be invalid, the remaining provisions shall not be affected thereby.

This MOU will take effect when signed by both agencies and remain in effect until rescinded by formal action of either agency.

FOR THE TEXAS WATER COMMISSION:

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Larry R. Soward  
Executive Director

Date: \_\_\_\_\_

FOR THE TEXAS DEPARTMENT OF HEALTH:

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Robert Bernstein, M.D., F.A.C.P.  
Commissioner of Health

Date: \_\_\_\_\_