

*The Agency is seeking your input regarding the following noted suggested rule changes. These suggested changes are NOT final rule changes.*

Legend: (Proposed New Rule)

Regular Print = Proposed new language

§289.101. Memorandum of Understanding Between the Department of State Health Services and the Texas Commission on Environmental Quality Regarding Radiation Control Functions.

(a) Purpose. The purpose of this Memorandum of Understanding (MOU) between the Department of State Health Services (DSHS) and the Texas Commission on Environmental Quality (TCEQ) regarding the regulation of sources of radiation is to acknowledge each agency's respective jurisdiction and duties under Health and Safety Code (HSC), Chapter 401. Pursuant to HSC, §401.414, the separate areas of each agency's jurisdiction are articulated; and the duties and responsibilities of and between the two agencies are clarified. This MOU is adopted between DSHS and TCEQ to ensure that regulation of radiation sources is consistent with HSC, Chapter 401; avoids duplication of effort; and results in a well-coordinated, consistent regulatory scheme.

(b) Definitions. The words and terms used in this section shall have the same meaning as defined in the HSC, §401.003, unless the context clearly indicates otherwise.

(c) Jurisdiction.

(1) DSHS is the Texas Radiation Control Agency. DSHS has jurisdiction over activities and substances regulated under HSC, Chapter 401, except as provided by HSC, §401.011(b) and Subchapters E, F, G, and K of Chapter 401.

(2) TCEQ has jurisdiction to regulate and license:

(A) the disposal of radioactive substances;

(B) the processing or storage of low-level radioactive waste or naturally occurring radioactive material (NORM) waste received from other persons, except oil and gas NORM;

(C) the recovery or processing of source material in accordance with HSC, Chapter 401, Subchapter G;

(D) the processing of by-product material as defined by HSC, §401.003(3)(B); and

(E) sites for the disposal of:

(i) low-level radioactive waste;

(ii) by-product material; or

(iii) NORM waste.

(d) Responsibility over specific activities.

(1) The receipt, storage, or processing of radioactive substances received by a TCEQ licensee for the activity covered by the TCEQ license shall be regulated by TCEQ. All other uses of radioactive material (e.g., well logging, industrial radiography, gauging devices, etc.) at a TCEQ-licensed facility shall be regulated by DSHS.

(2) Radioactive waste produced at DSHS-licensed facilities remains under DSHS jurisdiction until it is transferred to a licensed waste broker, waste processor, or a low-level radioactive waste disposal site.

(3) DSHS has jurisdiction over the possession, processing, and/or use of NORM except for its disposal. TCEQ has jurisdiction over the commercial or third party waste processing and/or disposal of non-oil and gas NORM waste.

(e) Radioactive materials and water quality.

(1) TCEQ has the responsibility for issuance of licenses, permits, and for enforcement of the terms and conditions of licenses, permits, rules, and/or orders that concern the treatment and discharge of radioactive material within the meaning of pollutant as defined in the Water Code, Chapter 26.

(2) TCEQ's jurisdiction regarding discharge of radioactive material is not exclusive as certain wastes are regulated by the Railroad Commission of Texas and DSHS regulates radioactive materials discharged to sanitary sewers. No separate license from TCEQ shall be required to authorize discharge of radioactive wastewaters into a sanitary sewer by DSHS licensees.

(3) TCEQ and DSHS shall notify each other in the event that radioactive materials impact water quality, including safe drinking water standards.

(f) Coordination of regulatory activities. DSHS and TCEQ shall coordinate with each other in the following activities.

(1) DSHS and TCEQ each agree to work together to ensure that complete regulation is maintained for sources, uses, and users of radiation. As appropriate, DSHS and TCEQ each agree to coordinate rulemaking activities between the two agencies and the Texas Radiation Advisory Board (TRAB) to ensure consistency of regulation in accordance with HSC, §401.020. In addition, TCEQ agrees to coordinate with DSHS in the preparation of the annual evaluation and report to the Legislative Budget Board as required under the Government Code, §2110.006 and §2110.007. DSHS and TCEQ each agree to seek and consider advice from TRAB on issues that involve the development, use, or regulation of sources of radiation.

(2) DSHS and TCEQ each agree to coordinate rulemaking activities that pertain to the requirements of the Agreement between the State of Texas and the United States Nuclear Regulatory Commission (NRC), as amended, and to ensure the compatibility of rules and guidelines with federal regulatory programs. Each agency agrees to coordinate on providing information on any proposed legislation relating to the regulation of radioactive substances.

(g) Incident response. Incidents concerning radioactive material will be investigated as follows.

(1) Response to unidentified radioactive material discovered at municipal landfills will be investigated by TCEQ. If the investigation reveals that the waste is not acceptable for the municipal landfill and is determined to be generated by a DSHS licensee, TCEQ will refer the matter to DSHS.

(2) Each agency will investigate incidents and allegations concerning radioactive material within each agency's jurisdiction and make required notifications to the NRC.

(h) Emergency preparedness. Emergency preparedness for response to radiological emergencies shall be as follows.

(1) The State of Texas is required by federal laws and regulations to have trained personnel always available for emergency response training, drills, exercises, and actual emergency response. DSHS is assigned the lead role for the state response to radiological emergencies.

(2) DSHS shall provide training to emergency responders along low-level radioactive waste shipping routes with funds collected from shippers of low-level radioactive waste.

(3) DSHS shall collect an annual fee from the operators of fixed nuclear facilities in the state for expenses arising from emergency response activities, including training.

(4) DSHS and TCEQ will coordinate personnel availability for emergency preparedness and response activities.

(5) DSHS will inform TCEQ in a timely manner of all required exercises, drills, and training. All DSHS and TCEQ technical personnel who work in the radiation program and are assigned to the emergency response team shall attend appropriate emergency response training coordinated by DSHS. TCEQ shall notify DSHS of changes in the employment status of all TCEQ radiation personnel assigned to the emergency response team. In the event of an emergency, the appropriate DSHS and TCEQ radiation staff will be available for emergency response under the direction of DSHS staff and in accordance with Annex D of the State of Texas Emergency Management Plan.

(i) Mutual assistance. Each agency may request from the other agency short-term assistance of personnel or resources when there is need for such assistance, such as for

performing close-out surveys, training, incident/emergency response and recovery operations, environmental monitoring, technical reviews, financial security information, and technical support at contested hearings or other project information. Each agency will provide the requested assistance to the extent possible without disrupting its own required activities, in accordance with an approved interagency contract when applicable.

(j) Financial security for decontamination, decommissioning, reclamation, corrective action, and disposal of radioactive material.

(1) When required, TCEQ and DSHS will ensure that financial security is provided for each entity under each agency's jurisdiction.

(2) For entities licensed by both agencies:

(A) each agency will ensure that separate financial security instruments are maintained;

(B) the agencies shall coordinate the allocation of financial security provided to each agency and determine an equitable division of financial assurance to avoid duplication;

(C) each agency will review, evaluate, and collect sufficient financial security instruments required for decontamination, decommissioning, reclamation, and disposal of radioactive material pursuant to each agency's rules for each entity under their respective jurisdictions; and

(D) in the event that either agency cannot determine that decontamination, decommissioning, reclamation, or disposal of radioactive material activities fall under the exclusive jurisdiction of either agency, then both agencies will coordinate and share efforts to address the situation in a prompt manner.

(k) Miscellaneous.

(1) DSHS and TCEQ shall revise their respective rules and procedures as needed to implement this MOU.

(2) If any provision of this MOU is held to be invalid, the invalid provision will be severed and the remaining provisions shall not be affected.

(l) Effective date. This MOU will take effect after approval by both agencies and 20 days after the date on which it is filed in the Office of the Secretary of State in accordance with the provisions of Government Code, §2001.036.