

25 TEXAS ADMINISTRATIVE CODE

§289.101

Memorandum of Understanding Between the Texas Department of Health and  
the Texas Natural Resource Conservation Commission Regarding  
Radiation Control Functions

Texas Regulations for Control of Radiation

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	<u>Page</u>
§289.101(a) Purpose . . . . .	101-1
§289.101(b) Definitions . . . . .	101-1
§289.101(c) Jurisdiction . . . . .	101-1
§289.101(d) Responsibilities . . . . .	101-1
§289.101(e) Relationship with the United States Nuclear Regulatory Commission (NRC) and the Texas Radiation Advisory Board (TRAB) Regarding Rulemaking . . . . .	101-2
§289.101(f) In Situ Uranium Mining . . . . .	101-2
§289.101(g) Emergency Preparedness . . . . .	101-4
§289.101(h) Management of Radioactive Wastewaters . . . . .	101-4
§289.101(i) Financial Security Instruments . . . . .	101-5
§289.101(j) Low-level Waste Health Surveillance Survey . . . . .	101-5
§289.101(k) Dosimetry Program and Meter Calibration . . . . .	101-5
§289.101(l) Mutual Assistance . . . . .	101-5
§289.101(m) Maintenance of Files on Known Disposal Sites and Contaminated Facilities . . . . .	101-5
§289.101(n) Relationship with other Memoranda of Understanding . . . . .	101-6
§289.101(o) Radioactive Substances Exempted for Release for Unrestricted Use	101-6
§289.101(p) Miscellaneous . . . . .	101-6
§289.101(q) Effective Date . . . . .	101-6
§289.101(r) Dispute Resolution . . . . .	101-6

## 25 TEXAS ADMINISTRATIVE CODE

§289.101 Memorandum of Understanding Between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions.

(a) Purpose. The purpose of this Memorandum of Understanding (MOU) is to implement and coordinate the responsibilities and define the respective duties of the agencies in the regulation of sources of radiation in accordance with Texas Health and Safety Code (code), §401.414 and §402.1512, to provide a consistent approach to avoid duplication, and to delineate areas of separate jurisdiction.

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

(c) Jurisdiction.

(1) In accordance with §401.412 of the code, the Texas Natural Resource Conservation Commission (TNRCC) has primary jurisdiction to regulate and issue licenses for the disposal of radioactive substances, except for byproduct material, as defined in the code, §401.003, and for naturally occurring radioactive material (NORM) originating from oil and gas production and exploration activities, defined as "oil and gas NORM waste" in the code, §401.003.

(2) The TDH has jurisdiction to regulate and license the possession, receipt, use, handling, transfer, transport, and storage of all radioactive material, including the recovery and processing of source material, and processing and disposal of byproduct material as defined in the code, §401.003. The TDH has sole jurisdiction to regulate and register or license the use or service of electronic products as defined in the code, §401.003. The code, §401.106, gives the TDH the authority, through rulemaking by the Texas Board of Health, to exempt a source of radiation or a kind of use or user from licensing or registration requirements.

(d) Responsibilities.

(1) The receipt, storage, and/or processing of radioactive substances received by a TNRCC licensee at a commercial radioactive substance disposal facility for the explicit purpose of disposal at that facility shall be regulated by the TNRCC. All other uses of radioactive material (e.g., well logging, industrial radiography, gauging devices, etc.) at a TNRCC-licensed radioactive substance disposal facility shall be regulated by the TDH.

(2) Processing of radioactive substances at a TNRCC-licensed commercial radioactive substance disposal facility by persons other than the TNRCC licensee shall be authorized only by the TDH under a license or under reciprocal recognition of an out-of-state license and shall be in accordance with the jurisdiction of the TDH.

§289.101(d)(3)

(3) The receipt, storage, and processing of radioactive material at TDH-licensed facilities whose primary activity is not disposal of radioactive substances but which are also licensed by the TNRCC for on-site non-commercial disposal of radioactive substances shall be regulated by the TDH.

(e) Relationship with the United States Nuclear Regulatory Commission (NRC) and the Texas Radiation Advisory Board (TRAB) regarding rulemaking. The TNRCC and the TDH agree to work together to ensure that complete regulation is maintained for sources, uses, and users of radiation. As appropriate, the TDH and the TNRCC agree to coordinate rulemaking activities between the two agencies and the TRAB to ensure consistency of regulation. Each agency agrees to coordinate rulemaking activities that pertain to the requirements of the Agreement between the State of Texas and the 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.

(f) In situ uranium mining.

(1) The TDH has primary responsibility for licensing and enforcement activities for above ground process plant facilities excluding wellhead assemblies, well monitoring equipment, and preinjection equipment associated with waste disposal wells. The TDH will review the applicant's design, construction, operation, record keeping, maintenance, and decommissioning and closure plans to ensure that they meet TDH requirements. The TDH has primary responsibility for regulation of surface reclamation, decontamination, and decommissioning.

(2) The TNRCC has primary responsibility for permitting and enforcement activities for all wells permitted by the TNRCC underground injection control program, wellhead assemblies, and groundwater monitoring equipment. The TNRCC will review the applicant's design, construction, operation, record keeping, maintenance, and closure plans to ensure that they meet the TNRCC requirements. The TNRCC is also responsible for reviewing the design and operations plans for groundwater monitoring, and excursion detection and response, in consultation with the TDH. The TNRCC is responsible for regulation of groundwater monitoring, excursion detection and response, and groundwater restoration. Preinjection equipment associated with waste disposal wells (tanks, filters, pumping stations, etc.) is the primary permitting and enforcement responsibility of the TNRCC.

(3) The TDH and the TNRCC are responsible for the review, permitting, licensing, and enforcement activities for fluid holding ponds. The TDH and the TNRCC will review the applicant's design, construction, operation, record keeping, maintenance, and closure plans to ensure that they meet the respective agency requirements and license or permit conditions. The TDH and the TNRCC may coordinate inspections, sampling programs, and enforcement actions. Once a TNRCC permit for waste disposal wells associated with fluid holding ponds has been revoked, the TDH is responsible for enforcement activities for fluid holding ponds.

§289.101(f)(4)

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

(5) Applications and other information required by the TNRCC will be accepted as part of the application to the TDH. The TDH will inform the TNRCC in writing of any application for a radioactive material license for in situ uranium mining. A copy of the application and subsequent information bearing on the technical merit of the applications or other substantive issues received by either agency will be forwarded to the other agency, if requested.

(6) TDH licenses will contain a provision that licensees must comply with TNRCC permit requirements. TNRCC permits will contain a provision that permittees must comply with TDH license requirements.

(7) The TNRCC will require reporting of all spills. The TDH will require reporting of spills in accordance with §289.260(h) of this title (relating to Licensing of Uranium Recovery and Byproduct Material Disposal Facilities).

(8) The TNRCC regulates discharges into waters in the state.

(9) The TDH has primary responsibility for enforcement of the conditions of its licenses and rules. The TNRCC has primary responsibility for enforcement of the conditions of its permits and rules. Each agency will refer to the other agency any complaints received that are the primary responsibility of the other agency. When deemed appropriate by both agencies, the TNRCC and the TDH may jointly enforce permit and license terms and conditions, and may make joint inspections and cooperate on enforcement actions. Nothing herein shall preclude either agency from undertaking individual enforcement or legal actions.

(10) Requirements for financial security for decontamination, decommissioning, stabilization, reclamation, maintenance, surveillance, control, storage, and disposal of radioactive materials of the below and above ground site to specified radiological and chemical levels will be established jointly by the TNRCC and the TDH. Posting of financial security with the TDH will include funds for groundwater restoration as agreed with the TNRCC. The TNRCC will require financial assurance for plugging and abandonment of injection and monitor wells associated with TNRCC underground injection control permits.

(11) In the event that financial security or assurances deposited in the Radiation and Perpetual Care Fund as provided herein are required to complete decontamination, decommissioning, stabilization, reclamation, maintenance, surveillance, control, storage, groundwater restoration, and disposal of radiation material, the TDH, in agreement with the TNRCC, may enter into contracts 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.

§289.101(f)(12)

(12) The TDH will specify in its licenses the parameters to be met in surface reclamation, decontamination, and decommissioning.

(g) Emergency preparedness.

(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 at fixed nuclear facilities. The code, §401.066, requires the TDH to implement these activities.

(2) The TDH and the TNRCC will coordinate personnel availability for emergency planning and response activities. Each agency is authorized to collect an annual fee from the operators of fixed nuclear facilities in the state for expenses arising from emergency response activities, including training.

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

(h) Management of radioactive wastewaters.

(1) The TNRCC is the state agency having the jurisdiction in accordance with the Texas Water Code, Chapter 26, for the discharge of any waste or wastewaters, including radioactive wastewaters, into or adjacent to waters in the state, except for those wastes regulated by the Railroad Commission of Texas. No such discharge is allowed unless authorized by the TNRCC or by another state agency having jurisdiction over the activity. The TNRCC has responsibility for issuance of permits and for enforcement of the terms and conditions of permits, rules, and/or orders that concern the treatment and discharge of radioactive wastewaters.

(2) The TNRCC shall consult with the TDH with regard to regulation and management of radioactive wastewaters 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 wastewaters. The TNRCC shall notify the TDH, Bureau of Radiation Control, within 90 days of receipt of an administratively complete application, for a treatment and/or disposal permit for radioactive wastewaters. The TNRCC shall provide the TDH with a copy of the wastewater treatment and/or disposal permit application within 90 days of receipt of an administratively complete application. Within 30 days of receipt of a proposed permit, the TDH shall provide the TNRCC with the appropriate permit limits for the radioactive component of wastewater discharges and cumulative limits for disposal sites, if land application is contemplated by the application. No separate license from the TDH shall be required to authorize that discharge. The TDH may provide the TNRCC with other suggestions related to management of radioactive wastewaters.

§289.101(h)(2)

(3) TDH-licensed facilities requiring a wastewater permit shall contain a provision that licensees must comply with the TNRCC permit requirements. TNRCC permits governing facilities requiring a radioactive materials license from the TDH shall contain a provision that permittees must comply with TDH license requirements.

(i) Financial security instruments. The TNRCC will perform periodic reviews and evaluate the financial security instruments for licensed radioactive waste disposal sites and non-oil and gas NORM waste disposal facilities in accordance with its jurisdiction. The TDH will perform periodic reviews and evaluate the financial security instruments for licenses in accordance with its jurisdiction. The Radiation and Perpetual Care Fund will be available for use by both agencies for use of financial security as appropriate.

(j) Low-level waste health surveillance survey. In accordance with the code, §402.058, the TDH and the TNRCC agree to coordinate efforts, as needed, in conjunction with the Texas Low-Level Radioactive Waste Disposal Authority and the local public health officials, in the development of a health surveillance survey for the population in the vicinity of a radioactive waste disposal site.

(k) Dosimetry program and meter calibration. The TDH may provide personnel monitoring services, thermoluminescent dosimeters for environmental monitoring, and radiation survey instrument calibration for TNRCC personnel in the radiation program in accordance with an approved contract for those services.

(l) 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, environmental monitoring, technical reviews, financial assurance 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.

(m) Maintenance of files on known disposal sites and contaminated facilities. The TDH agrees to assist the TNRCC in maintaining files on known locations in the state at which radioactive material has been disposed of and at which soil and facilities are contaminated, and in maintaining files that contain information on inspection reports related to these locations. Each agency agrees to maintain files referred to in this subsection at the location of the jurisdictional agency.

§289.101(n)

(n) Relationship with other Memoranda of Understanding. This MOU supersedes those found at §289.125 of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste), §289.81 of this title (relating to Memorandum of Understanding on In Situ Uranium Mining between the Texas Department of Health and the Texas Department of Water Resources), 30 Texas Administrative Code §336.11, relating to Appendix A, and the Memorandum of Understanding Between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control.

(o) Radioactive substances exempted or authorized for release for unrestricted use. When proposing an exemption, the TDH will coordinate with the TNRCC, so that the TNRCC may develop a compatible disposal requirement, if applicable. The TNRCC, in cooperation with the TDH, will analyze the long-term aspects of disposal to ensure that the doses are maintained as low as reasonably achievable (ALARA) and below the dose limits for unrestricted release. Once a source of radiation is exempted from regulation by the Texas Board of Health in accordance with the code, §401.106, or meets release criteria for unrestricted use in accordance with the provisions of the *Texas Regulations for Control of Radiation*, its disposal as a radioactive substance is not subject to further regulation by the TNRCC.

(p) Miscellaneous.

(1) The TNRCC and the TDH agree to revise their respective rules and procedures as needed to implement this MOU.

(2) Agency representatives shall meet as needed to discuss possible changes in this MOU and to encourage increased communication between the agencies.

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

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

(q) Effective date. This amended MOU will take effect when signed by both agencies and remain in effect until rescinded by either agency by board or commission action taken in accordance with the terminating agency's procedures.

(r) Dispute resolution. The parties to this MOU agree to submit any disputes and other matters in question between the TNRCC and TDH that arise out of or are related to this MOU to mediation before commencement of any suit. The parties further hereby agree that this provision is not a waiver of either of the sovereign immunity of the TNRCC or the TDH.