

25 TEXAS ADMINISTRATIVE CODE

§289.102

**Memorandum of Understanding Between the Department of State Health Services and the
Railroad Commission of Texas Regarding Radiation Control Functions**

(effective January 2, 2012)

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§289.102. Memorandum of Understanding between the Department of State Health Services and the Railroad Commission of Texas Regarding Radiation Control Functions.

(a) Purpose. The purpose of this Memorandum of Understanding (MOU) is to delineate areas of respective jurisdiction and to coordinate the respective responsibilities and duties of the Department of State Health Services (DSHS) and the Railroad Commission of Texas (RRC) in the regulation of sources of radiation in accordance with Health and Safety Code, §401.414, in order to provide a consistent approach and to avoid duplication. Nothing in this MOU shall be construed to reduce the statutory authority of either agency.

(b) Definitions. The words and terms used in this section shall have the same meaning as defined in the Health and Safety Code, §401.003, unless the context clearly indicates otherwise. Oil and gas naturally occurring radioactive material (NORM) waste is defined in the Health and Safety Code, §401.003(27), as solid, liquid, or gaseous material or combination of materials, excluding source material, special nuclear material, and by-product material, that:

(1) in its natural physical state spontaneously emits radiation;

(2) is discarded or unwanted;

(3) is not exempt by DSHS rule adopted under Health and Safety Code, §401.106;

and

(4) constitutes, is contained in, or has contaminated oil and gas waste as that term is defined in the Natural Resources Code, §91.1011.

(c) General agency jurisdiction. The jurisdictional authority for each agency is as follows.

(1) RRC jurisdiction. In accordance with the Health and Safety Code, §401.415 (relating to Oil and Gas NORM Waste), the RRC has sole authority to:

(A) regulate and issue licenses, permits and orders for the disposal of oil and gas NORM waste; and

(B) in order to protect public health and safety and the environment, require the owner or operator of oil and gas equipment used in exploration, production, or disposal to determine whether the equipment contains or is contaminated with oil and gas NORM waste and identify any equipment determined to contain or be contaminated with oil and gas NORM.

(2) DSHS jurisdiction. The DSHS has jurisdiction to regulate and license the possession, receipt, use, handling, transfer, transport, and storage of all radioactive material in accordance with Health and Safety Code, §401.003(3)(A). The DSHS has sole jurisdiction to regulate and register or license the use or service of electronic products as defined in the Health and Safety Code, §401.003(9). The Health and Safety Code, §401.106, gives the DSHS the authority, through rulemaking by the Executive Commissioner of the Texas Health and Human Services Commission, to exempt a source of radiation or a kind of use or user from licensing or registration requirements.

(d) Jurisdiction over specific activities and wastes. Each agency has the following responsibilities.

(1) Disposal activities. The RRC has jurisdiction over the disposal of oil and gas NORM waste. For purposes of this MOU, disposal is defined in 16 TAC, §4.603(3) (relating to Definitions) as "engaging in the act of discharging, depositing, injecting, dumping, spilling, leaking, or placing of any oil and gas NORM waste into or on any land or water, or causing or allowing any such act, so that such waste, or any constituent thereof, may enter the environment or be emitted into the air or discharged into any waters, including subsurface waters. For purposes of this subchapter, disposal of oil and gas NORM waste includes its management at the site (e.g., lease, unit, or facility) where disposal will occur when undertaken for the explicit purpose of facilitating disposal at that site. The term does not include decontamination activities, except for in-place mixing of oil and gas NORM waste to remedy historical contamination of the land surface and decontamination of equipment and facilities that become contaminated solely through disposal operations. In addition, the term does not include activities, including processing or treatment, that occurs at a location other than the disposal site."

(2) Decontamination activities. The DSHS has jurisdiction over decontamination activities, except for in-place mixing of oil and gas NORM waste to remedy historical contamination of the land surface and decontamination of equipment and facilities that become contaminated solely through disposal operations.

(3) Transportation activities. The DSHS has jurisdiction over the transportation of oil and gas NORM waste.

(4) Radioactive logging tools. The DSHS has jurisdiction over radioactive logging tools used during normal operations by the licensee. The RRC and the DSHS have jurisdiction over radioactive logging tools that are abandoned down hole.

(5) Radioactive tracers. The DSHS has jurisdiction over radioactive tracers used in normal operations by the licensee. The RRC has jurisdiction over Class II injection wells into which well logging screen out wastes (well returns) may be disposed in accordance with §289.253(u)(3) of this title (relating to Radiation Safety Requirements for Well Logging Service Operations and Tracer Studies).

(6) NORM-contaminated equipment. The DSHS has jurisdiction over NORM-contaminated equipment, except as stated in subsection (c)(1) of this section, and with respect to the RRC requirements for identification of equipment contaminated with oil and gas NORM in 16 TAC, §4.605 (relating to Identification of Equipment Contaminated with NORM).

(7) Recycling/Scrap yards. The RRC has jurisdiction over the disposal of NORM-contaminated scale from oil and gas equipment that is managed at a pipe yard, scrap yard, or recycling facility. However, the decontamination of NORM-contaminated pipe and other equipment at any facility is under the jurisdiction of the DSHS. A DSHS-specific licensee would be required to perform the removal of NORM-contaminated scale on the ground at a pipe yard, scrap yard, or recycling facility in accordance with §289.259(i) of this title (relating to Licensing of Naturally Occurring Radioactive Material (NORM)). The removed NORM waste would require disposal in accordance with RRC regulations.

(e) Coordination of regulatory activities. The DSHS and the RRC shall coordinate with each other in the following activities.

(1) The DSHS and the RRC each agree to work together to ensure that complete regulation is maintained for radioactive materials and other sources of radiation associated with oil and gas exploration, development, and production operations. The DSHS and the RRC 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 the Health and Safety Code, §401.020. In addition, the RRC agrees to coordinate with the 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. The DSHS and the RRC each agree to seek, and consider, advice from the TRAB on issues that involve management or disposal of NORM waste generated in connection with oil or gas exploration, development, or production operations.

(2) The DSHS and the RRC 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, as amended, and to ensure that rules and guidelines are compatible with federal regulatory programs. Each agency agrees to coordinate with the other by providing information on any proposed legislation relating to the regulation of radioactive substances.

(3) The DSHS and the RRC each agree to meet as needed to discuss possible changes in this MOU and to encourage increased communication between the agencies.

(4) The DSHS and the RRC each agree to coordinate with the other agency with respect to activities involving radioactive sources that are lodged, abandoned, or lost down hole. Prior to approving abandonment procedures, tool recovery, well re-entry, and corrective action when a radioactive source has been breached or radiation otherwise escapes the source, RRC will assure coordination with DSHS to obtain concurrence.

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(f) Coordination of enforcement and incident response activities. The DSHS has responsibility for enforcement of the conditions of its licenses and rules. The RRC has jurisdiction for enforcement of the conditions of its permits and rules. Each agency will refer to the other agency any complaints received that are the responsibility of the other agency. When deemed appropriate by both agencies, the RRC and the DSHS may jointly enforce permit and license terms and conditions, make joint inspections and incident investigations, and cooperate on enforcement actions. Each agency shall retain the authority to undertake separate enforcement or legal actions.

(g) Mutual assistance. The DSHS and the RRC may each request from the other agency short-term assistance of personnel or resources when there is need for such assistance, such as for performing training, environmental or public health or safety monitoring, or technical reviews. Each agency will provide the requested assistance to the extent possible without disrupting its own required activities.

(h) Miscellaneous.

(1) The RRC and the DSHS agree to 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 remaining provisions shall not be affected thereby.

(i) 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. This MOU will remain in effect until rescinded by either agency.