

Robert J. Huston, *Chairman*  
R. B. "Ralph" Marquez, *Commissioner*  
John M. Baker, *Commissioner*  
Jeffrey A. Saitas, *Executive Director*



## TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

*Protecting Texas by Reducing and Preventing Pollution*

September 22, 2000

Mr. Paul H. Lohaus, Director  
U.S. Nuclear Regulatory Commission  
Office of State Programs  
Document Control Desk  
PI-37  
Washington, D.C. 20555

Re: Final Adopted Revisions to 30 Texas Administrative Code (TAC) Rule Chapters 336, 305, 281, 50, 39, and 37

Dear Mr. Lohaus:

In accordance with OSP Procedure SA-201, Review of State Regulations (November 10, 1998), we are submitting the above referenced adopted regulations for your review. A draft of the proposed rule revisions was submitted to you for review and comment in our letter dated January 14, 2000. In your reply letter dated March 21, 2000, you indicated that if our proposed rules were adopted without significant change, they would meet your compatibility requirements. The proposed rule revisions were published for public comment on June 16, 2000 in the Texas Register.

The comments received were limited in nature and the commission proposed no changes in response to the comments received.

The only changes made from proposal to adoption were clarifying changes and corrections made by the Texas Natural Resource Conservation Commission staff. I am enclosing (Enclosure 1) a copy of our adopted rules as published in the September 8, 2000 edition of the Texas Register. This published version contains the complete wording of each rule section where a change was made from proposal to adoption. The preamble of the document explains the changes. I am also enclosing (Enclosure 2) a document which highlights in underline (additions) and strikeout (deletions) the changes made from proposal to adoption. I recommend that you use the highlighted Enclosure 2 to review the simple rule changes made from proposal to adoption and, if necessary, look up the reasons for the changes in the preamble of Enclosure 1.

Completely updated radiation control program rules in Chapters 336, 305, 281, 50, 39, and 37 can be viewed at our web site:

<http://home.tnrcc.state.tx.us/oprd/rules/indxchap.html>

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Mr. Paul H. Lohaus, Director  
Page 2  
September 22, 2000

Please contact Dr. Hygie Reynolds of my staff, at (512) 239-6825, or by correspondence to the letterhead address at Mail Code 131 (MC-131), if you have questions or need additional information.

Sincerely,



Alice Hamilton Rogers, P. E., Manager  
UIC and Radioactive Waste Section  
Texas Natural Resource Conservation Commission

HR/AR/jb

Enclosures

cc: Dr. Hygie H. Reynolds

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Ann Dillon  
General Counsel  
General Services Commission  
Effective date: September 11, 2000  
Proposal publication date: June 9, 2000  
For further information, please call: (512) 463-3960

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**SUBCHAPTER F. VENDOR PERFORMANCE  
AND DEBARMENT PROGRAM**

**1 TAC §113.100**

The repeal of the rules is adopted under the authority of the Texas Government Code, Title 10, Subtitle D, §§2152.002, 2155.068, 2155.069, 2155.077, 2155.134, 2177.001, and the Texas Education Code, §34.001 which provides the General Services Commission with the authority to promulgate rules necessary to implement these sections.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 22, 2000.

TRD-200005914  
Ann Dillon  
General Counsel  
General Services Commission  
Effective date: September 11, 2000  
Proposal publication date: June 9, 2000  
For further information, please call: (512) 463-3960

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**PART 10. DEPARTMENT OF  
INFORMATION RESOURCES**

**CHAPTER 201. PLANNING AND  
MANAGEMENT OF INFORMATION  
RESOURCES TECHNOLOGIES**

**1 TAC §201.14**

The Department of Information Resources adopts amended §201.14, relating to digital signatures. The amended rule is adopted without changes to the proposed text as published in the July 7, 2000, *Texas Register* (25 TexReg 6449).

No comments were received in response to the proposed amendment to §201.14.

The amendment, which corrects a minor clerical error in the rule's definition of "key pair," is adopted in accordance with Texas Government Code §2054.052(a), which provides the department may adopt rules as necessary to implement its responsibilities, and Texas Government Code §2054.060(a), which permits the department to adopt rules pertaining to digital signatures.

The amended rule affects Texas Government Code §2054.060.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 28, 2000.

TRD-200006026  
Renee Mauzy  
General Counsel  
Department of Information Resources  
Effective date: September 17, 2000  
Proposal publication date: July 7, 2000  
For further information, please call: (512) 475-2153

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**TITLE 30. ENVIRONMENTAL QUALITY**

**PART 1. TEXAS NATURAL RESOURCE  
CONSERVATION COMMISSION**

**CHAPTER 37. FINANCIAL ASSURANCE**

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to §37.9001, Applicability; §37.9005, Definitions; §37.9030, Applicability; §37.9035, Definitions; §37.9045, Financial Assurance Requirements for Closure and Post Closure; and §37.9055, Institutional Control Requirements. Sections 37.9030 and 37.9035 are adopted *with changes* to the proposed text as published in the June 16, 2000, issue of the *Texas Register* (25 TexReg 5798). Sections 37.9001, 37.9005, 37.9045, and 37.9055 are adopted *without changes* and will not be republished.

**BACKGROUND AND SUMMARY OF THE FACTUAL BASIS  
FOR THE ADOPTED RULES**

The changes adopted in this chapter are part of a larger rulemaking to revise the agency's radiation control rules. This rule package has three major goals: (1) implement House Bill (HB) 1172, 76th Legislature, 1999, and its amendments to the Texas Health and Safety Code (THSC); (2) implement the recommendations of the TNRCC's Business Process Review Permit Implementation Team (BPR-PIT) to provide for consistency between the administrative procedures of the radiation control program and the other permitting programs of the agency; and (3) improve readability and understanding by reorganizing 30 TAC Chapter 336 (relating to Radioactive Substance Rules), putting its requirements into plain English and eliminating its redundancies and conflicts.

Changes to implement HB 1172 are: (1) amending the definition of low-level radioactive waste to be compatible with the United States Nuclear Regulatory Commission's (NRC's) definition; (2) incorporating the TNRCC's new authority to exempt from application of a rule; (3) adding an exemption to continue or expand on-site low-level radioactive waste disposal licensed before September 9, 1989; and (4) adding exemptions from radioactive material licensing requirements for facilities participating in the Voluntary Cleanup Program or Superfund cleanups.

The changes to Chapter 37 implement HB 1172 by incorporating the newly defined term "low-level radioactive waste" and to reflect changes to references due to the reorganization of Chapter 336.

**SECTION BY SECTION DISCUSSION**

#### Subchapter S - Financial Assurance for Alternative Methods of Disposal of Radioactive Materials

The title of the subchapter was amended by deleting "Alternative Methods of Disposal of" to agree with the deletion of the reference to Subchapter F in §37.9001.

To be consistent with organizational changes proposed in Chapter 336, §37.9001 was amended to add "of this title (relating to Radioactive Substance Rules), except owners or operators of a facility licensed under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste)" to indicate that this subchapter does not apply to facilities licensed under Subchapter H; and to delete, "Subchapter F of this title (relating to Licensing of Alternative Methods of Disposal of Radioactive Material)."

Section 37.9005 was amended to correct the cross-reference in the first sentence to "§336.602."

#### Subchapter T - Financial Assurance for Near-Surface Land Disposal Radioactive Waste

The title was amended to add "Low-Level" to conform with HB 1172.

Section 37.9030 was amended to add "Low-Level" to conform with HB 1172 and to add "and Chapter 336, Subchapter G of this title (relating to Decommissioning Standards)" to clarify that this subchapter is applicable to the ancillary surface facilities associated with a Subchapter H low-level radioactive waste facility per Title 10 Code of Federal Regulations Part 20. The proposed amendment to add a reference to Chapter 336, Subchapter G is withdrawn. This proposed amendment would have caused confusion because Chapter 37, Subchapter S (and not Subchapter T) applies to financial assurance for facilities licensed under Chapter 336, Subchapter G. Chapter 37, Subchapter T applies to financial assurance for facilities licensed under Chapter 336, Subchapter H. Chapter 336, Subchapter G only applies to decommissioning and radiological criteria for license termination of ancillary surface facilities at Chapter 336, Subchapter H licensed facilities. This is explained in Chapter 336, Subchapter G, §336.601(a) and 10 CFR §20.1401(a). Therefore, the proposal to add a reference to Chapter 336, Subchapter G in Chapter 37, Subchapter T on financial assurance for Chapter 336, Subchapter H facilities is withdrawn; and instead a concurrent change is made to Chapter 336, Subchapter H, §336.701 to clarify that Chapter 336, Subchapter G only applies to the ancillary surface facilities at Subchapter H licensed facilities.

Section 37.9035 was amended to add a reference to §336.602, which applies to ancillary facilities at near-surface land disposal low-level radioactive waste facilities. The proposed amendment to add a reference to Chapter 336, Subchapter G §336.602 is withdrawn for the same reasons given in the §37.9030 discussion. Also, from proposal to adoption, in the first line, the words "are defined" are corrected to "may be found" to be consistent with the wording in §37.9005.

Section 37.9045(a)(4) was amended to add "Low-Level" to conform with HB 1172.

Section 37.9055 was amended to add "Low-Level" to conform with HB 1172.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is

not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rules are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because there are no new requirements added. In addition, the adopted rules do not meet the applicability requirements of a "major environmental rule." The adopted rules do not exceed a standard set by federal law, exceed an express requirement of state law, nor exceed a requirement of a delegation agreement. The adoption is not promulgated solely under general authorities but rather under THSC, §401.412(d) and (f).

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rules is to implement HB 1172 by incorporating the newly defined term "low-level radioactive waste" and to reflect changes to references due to the reorganization of Chapter 336. The rules will substantially advance these specific purposes by appropriately amending §§37.9001, 37.9005, 37.9030, 37.9035, 37.9045, and 37.9055. Promulgation and enforcement of these rules will not burden private real property because there are no new requirements imposed on private real property.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the adopted rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP) nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adoption is not subject to the CMP.

#### HEARING AND COMMENTERS

A public hearing on the proposed amendments was held on July 6, 2000; however, no one appeared at the hearing to testify. No written comments were received concerning this chapter during the public comment period which closed on July 17, 2000.

#### SUBCHAPTER S. FINANCIAL ASSURANCE FOR RADIOACTIVE MATERIAL

##### 30 TAC §37.9001, §37.9005

##### STATUTORY AUTHORITY

The amendments are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 25, 2000.

TRD-200005971

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: September 14, 2000

Proposal publication date: June 16, 2000

For further information, please call: (512) 239-0348

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Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: September 14, 2000

Proposal publication date: June 16, 2000

For further information, please call: (512) 239-0348

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## SUBCHAPTER T. FINANCIAL ASSURANCE FOR NEAR-SURFACE LAND DISPOSAL OF LOW-LEVEL RADIOACTIVE WASTE

30 TAC §§37.9030, 37.9035, 37.9045, 37.9055

### STATUTORY AUTHORITY

The amendments are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

#### §37.9030. *Applicability.*

This subchapter applies to owners or operators required to provide financial assurance under Chapter 336, Subchapter H of this title (relating to Licensing Requirements For Near-Surface Land Disposal of Low-Level Radioactive Waste). This subchapter establishes requirements and mechanisms for demonstrating financial assurance for closure and post closure.

#### §37.9035. *Definitions.*

Definitions for terms that appear throughout this subchapter may be found in Subchapter A of this chapter (relating to General Financial Assurance Requirements), §336.2 of this title (relating to Definitions), and §336.702 of this title (relating to Definitions), except the following definitions shall apply for this subchapter.

(1) Annual review - Conducted on the anniversary date of the establishment of the financial assurance mechanism.

(2) Closure - Any one or combination of the following: closure, dismantlement, decontamination, decommissioning, reclamation, disposal, groundwater restoration, stabilization, monitoring, or post closure observation and maintenance.

(3) Facility - All contiguous land, water, buildings, structures, and equipment which are or were used for the disposal of radioactive waste, including the radioactive waste, and soils and groundwater contaminated by radioactive material.

(4) Institutional control - Shall be referenced as post closure.

(5) Post closure - The same as institutional control as specified in §336.734 of this title (relating to Institutional Requirements).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 25, 2000.

TRD-200005972

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## CHAPTER 39. PUBLIC NOTICE

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to §39.1, Applicability; §39.5, General Provisions; §39.11, Text of Public Notice; §39.13, Mailed Notice; §39.17, Notice of Minor Amendment; §39.701, Applicability; §39.703, Notice of Completion of Technical Review; §39.707, Published Notice; and §39.709, Notice of Contested Case Hearing on Application. The TNRCC also adopts the repeal of existing Subchapter F, §39.301, Notice of Declaration of Administrative Completeness; §39.302, Applicability; §39.303, Notice of License Applications Upon Completion of Technical Review; §39.305, Mailed Notice for Radioactive Material Licenses; §39.307, Published Notice; §39.309, Notice of Contested Case Hearing on Application; §39.311, Proof and Certification of Notice; and §39.313, Public Notification and Public Participation. Sections 39.703, 39.707, and 39.709 are adopted *with changes* to the proposed text as published in the June 16, 2000, issue of the *Texas Register* (25 TexReg 5800). Amended §§39.1, 39.5, 39.11, 39.13, 39.17, and 39.701 and the repeals, §§39.301 - 39.303, 39.305, 39.307, 39.309, 39.311, and 39.313 are adopted *without changes* and will not be republished.

### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The changes adopted in this chapter are part of a larger rulemaking to revise the agency's radiation control rules. This rule package has three major goals: (1) implement House Bill (HB) 1172, 76th Legislature, 1999, and its amendments to the Texas Health and Safety Code (THSC); (2) implement the recommendations of the TNRCC's Business Process Review Permit Implementation Team (BPR-PIT) to provide for consistency between the administrative procedures of the radiation control program and the other permitting programs of the agency; and (3) improve readability and understanding by reorganizing 30 TAC Chapter 336 (relating to Radioactive Substance Rules), putting its requirements into plain English and eliminating its redundancies and conflicts.

Changes to implement HB 1172 are: (1) amending the definition of low-level radioactive waste to be compatible with the United States Nuclear Regulatory Commission's (NRC's) definition; (2) incorporating the TNRCC's new authority to exempt from application of a rule; (3) adding an exemption to continue or expand on-site low-level radioactive waste disposal licensed before September 9, 1989; and (4) adding exemptions from radioactive material licensing requirements for facilities participating in the Voluntary Cleanup Program or Superfund cleanups.

The BPR-PIT changes are part of an agency-wide effort to make programs consistent where feasible. The agency's management has mandated the consistency effort to make agency processes more efficient and "user friendly." Most of the license application process requirements in Chapter 336 can be modified to be more consistent with the requirements of the other permitting programs within the agency. The TNRCC expects a consistent application process to be especially helpful for persons who

have multiple permits/licenses from the TNRCC or to staff during the review of consolidated permit applications. Major adopted changes are as follows: (1) that the radiation control program begins using the agency's definitions for major and minor amendments; and (2) the radiation control program license application process will be moved for the most part from Chapter 336 to Chapter 281 (relating to Applications Processing) and Chapter 305 (relating to Consolidated Permits) and amended to be consistent with agency administrative procedures.

The amendments and repeals in Chapter 39 are to incorporate the HB 1172 newly defined term "low-level radioactive waste" and to make only Subchapters H and M of this chapter applicable to radioactive material licenses in the future because Subchapter F is obsolete.

## SECTION BY SECTION DISCUSSION

### Subchapter A - Applicability and General Provisions

Section 39.1 was amended by replacing reference to Subchapters "B - F" with "B - E," by adding the word "and." Section 39.1 was also amended by deleting "and Public Notice for Radioactive Material Licenses" because there were no radioactive material licenses pending on September 1, 1999, (the first part of the sentence states it applies to radioactive material applications that were declared administratively complete before September 1, 1999) and former Subchapter F was repealed; and by deleting former paragraph (7) because the whole chapter is no longer to apply to radioactive material licenses; and by renumbering the last paragraph to account for the deletion of former paragraph (7).

Section 39.5(c) was amended by deleting the last sentence that stated, "This subsection does not apply to applications for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules)." Section 39.5(f), (g), and (h) was amended by deleting the last sentence that stated, "This subsection does not apply to applications for radioactive material licenses under Chapter 336 of this title." These amendments were made because the adopted rule has been changed so that Subchapter A no longer applies and only Subchapters H and M apply to radioactive material licenses.

Former §39.11(13) was deleted because the adopted rule has been changed so that only Subchapters H and M will apply to radioactive material licenses, and associated formatting changes were made to §39.11(11) and (12).

Former §39.13(b) was deleted because the adopted rule had been changed so that only Subchapters H and M will apply to radioactive material licenses.

Former §39.17(b)(2) was deleted because the adopted rule had been changed so that only Subchapters H and M will apply to radioactive material licenses. Conforming grammatical changes were also made to §39.17(b)(1).

### Subchapter F - Public Notice of Radioactive Material License Applications

Former Subchapter F was repealed because there were no radioactive material license applications pending on September 1, 1999, and Subchapter F applied to such applications declared administratively complete before September 1, 1999.

### Subchapter M - Public Notice for Radioactive Material Licenses

Section 39.701 was amended to delete "that is declared administratively complete on or after September 1, 1999," because

this date was past, and there were no applications still pending on September 1, 1999. Minor grammatical changes were also made to §39.701.

The title in §39.703 was changed to "Notice of Completion of Technical Review" to simplify it. Section 39.703(a) was amended by adding "Low-Level" to conform with this newly defined term in HB 1172. A minor correction was made after proposal because requirements to license a previously unlicensed site with buried radioactive material for decommissioning were moved from Chapter 336, Subchapter F to Chapter 336, Subchapter G in a concurrent rulemaking; therefore, any notice requirement applicable to Subchapter F should also reference Subchapter G. A reference to Subchapter G has been added accordingly after the reference to Subchapter F in §39.703(b).

A minor correction to §39.707(a) was made after proposal. Requirements to license a previously unlicensed site with buried radioactive material for decommissioning were moved from Chapter 336, Subchapter F to Chapter 336, Subchapter G in a concurrent rulemaking; therefore, any notice requirement applicable to Subchapter F should also reference Subchapter G. A reference to Subchapter G has been added accordingly after the reference to Subchapter F. Section 39.707(b) was amended by adding "Low-Level" to conform with this newly defined term in HB 1172.

Section 39.709(b) was amended adding "Low-Level" to conform with this newly defined term in HB 1172. A minor correction was also made after proposal because requirements to license a previously unlicensed site with buried radioactive material for decommissioning were moved from Chapter 336, Subchapter F to Chapter 336, Subchapter G in a concurrent rulemaking; therefore, any notice requirement applicable to Subchapter F should also reference Subchapter G. A reference to Subchapter G has been added accordingly after the reference to Subchapter F.

## FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments and repeals in Chapter 39 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because there are no new requirements added that are not already required by current state law.

## TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these adopted rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rules is to incorporate the HB 1172 defined term "low-level radioactive waste" in lieu of "radioactive waste" and to make only Subchapters H and M of this chapter applicable to radioactive material licenses in the future because obsolete Subchapter F is concurrently repealed. Promulgation and enforcement of these rules will not burden private real

property which is the subject of the rules because there are no new notice requirements added that are not also currently required by state law.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the adopted rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP) nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adoption is not subject to the CMP.

#### HEARING AND COMMENTERS

A public hearing on the proposed amendments and repeals was held on July 6, 2000; however, no one appeared at the hearing to testify. No written comments were received concerning this chapter during the public comment period which closed on July 17, 2000.

#### SUBCHAPTER A. APPLICABILITY AND GENERAL PROVISIONS

30 TAC §§39.1, 39.5, 39.11, 39.13, 39.17

#### STATUTORY AUTHORITY

The amendments are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 25, 2000.

TRD-200005973

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: September 14, 2000

Proposal publication date: June 16, 2000

For further information, please call: (512) 239-0348

#### SUBCHAPTER F. PUBLIC NOTICE OF RADIOACTIVE MATERIAL LICENSE APPLICATIONS

30 TAC §§39.301 - 39.303, 39.305, 39.307, 39.309, 39.311, 39.313

#### STATUTORY AUTHORITY

The repeals are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-0348

#### SUBCHAPTER M. PUBLIC NOTICE FOR RADIOACTIVE MATERIAL LICENSES

30 TAC §§39.701, 39.703, 39.707, 39.709

#### STATUTORY AUTHORITY

The amendments are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

#### §39.703. Notice of Completion of Technical Review.

(a) When the executive director has completed the technical review of an application for a license, major amendment, or renewal of a license issued under Chapter 336 of this title (relating to Radioactive Substance Rules) or for a minor amendment issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste), notice shall be mailed and published under this subchapter. The deadline to file public comment, protests, or hearing requests is 30 days after publication.

(b) For any other application for a minor amendment to a license issued under Chapter 336, Subchapter F of this title (relating to Alternative Methods of Disposal of Radioactive Material) or Subchapter G of this title (relating to Decommissioning Standards), notice shall be mailed under this subchapter. The deadline to file public comment, protests, or hearing requests is ten days after mailing.

#### §39.707. Published Notice.

(a) For applications under Chapter 336, Subchapter F of this title (relating to Alternative Methods of Disposal of Radioactive Material) or Subchapter G of this title (relating to Decommissioning Standards), when notice is required to be published under this subchapter, the applicant shall publish notice at least once in a newspaper of largest general circulation in the county in which the facility is located.

(b) For applications for a new license, renewal license, or major amendment to a license issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste), when notice is required to be published under this subchapter, the applicant shall publish notice in a newspaper published in the county or counties in which the facility is or will be located. If no newspaper is published in the county or counties in which the facility is or will be located, a written copy of the notice shall be posted at the courthouse door and five other public places in the immediate locality to be affected. The notice shall be posted for at least 31 days.

(c) In addition to published notice requirements in subsection (b) of this section, for an amendment of a license under Chapter 336, Subchapter H of this title, the chief clerk shall publish notice once in the *Texas Register*.

**§39.709. Notice of Contested Case Hearing on Application.**

(a) The requirements of this section apply when an application is referred to SOAH for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(b) For applications under Chapter 336, Subchapter F of this title (relating to Alternative Methods of Disposal of Radioactive Material) or Subchapter G of this title (relating to Decommissioning Standards), notice shall be mailed no later than 30 days before the hearing. For applications under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste), notice shall be mailed no later than 31 days before the hearing.

(c) When notice is required under this section, the text of the notice must include the applicable information specified in §39.411(b)(13) and (d) of this title (relating to Text of Public Notice).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-0348

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**CHAPTER 50. ACTION ON APPLICATIONS  
AND OTHER AUTHORIZATIONS  
SUBCHAPTER C. ACTION BY THE  
EXECUTIVE DIRECTOR**

**30 TAC §50.31**

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to §50.31, Purpose and Applicability. Section §50.31 is adopted *with a change* to the proposed text as published in the June 16, 2000 issue of the *Texas Register* (25 TexReg 5804).

**BACKGROUND AND SUMMARY OF THE FACTUAL BASIS  
FOR THE ADOPTED RULES**

This rulemaking applies to both the radiation control and water programs.

The radiation control amendment is a part of a larger radiation control rule adoption package that has three major goals: (1) implement House Bill (HB) 1172, 76th Legislature, 1999, and its amendments to the Texas Health and Safety Code (THSC); (2) implement the recommendations of the TNRCC's Business Process Review Permit Implementation Team to provide for consistency between the administrative procedures of the radiation control program and the other permitting programs of the agency; and (3) improve readability and understanding by reorganizing 30 TAC Chapter 336 (relating to Radioactive

Substance Rules), putting its requirements into plain English and eliminating its redundancies and conflicts.

Changes to implement HB 1172 are: (1) amending the definition of low-level radioactive waste to be compatible with the United States Nuclear Regulatory Commission's (NRC's) definition; (2) incorporating the TNRCC's new authority to exempt from application of a rule; (3) adding an exemption to continue or expand on-site low-level radioactive waste disposal licensed before September 9, 1989; and (4) adding exemptions from radioactive material licensing requirements for facilities participating in the Voluntary Cleanup Program or Superfund cleanups.

Texas Water Code (TWC), §5.122, provides authority for the commission to delegate to the executive director, by rule or order, its authority to act on certain uncontested matters. The commission has therefore delegated authority to the executive director to act on various matters in §50.31 Senate Bill (SB) 1421 amended TWC, §17.927, Application for Financial Assistance, to require an applicant for financial assistance to include, at the request of the Texas Water Development Board, a written determination by the commission on the financial, managerial, and technical capacity of the applicant to operate the system for which assistance is being requested. Senate Bill 1421 also amended Texas Civil Statutes, Article 6243-101, the Texas Plumbing Licensing Law, to require the commission to certify organizations that provide "self-help" project assistance, without a plumbing license, in a county any part of which is within 50 miles of an international border.

**SECTION BY SECTION DISCUSSION**

Section 50.31(b) was amended by capitalizing the word "subchapter." Section 50.31(b)(11) was amended to delete "radioactive waste or" because the term "radioactive material" in the same paragraph includes "low-level radioactive waste" by definition. New §50.31(b)(21) delegates to the executive director the determination of the financial, managerial, and technical capacity of applicants for loans from the Texas Water Development Board, if requested by that agency. However, a minor change has been made from proposal to adoption. In new §50.31(b)(21), the word "qualifications" has been changed to "capacity" to more closely match the new TWC §17.927(b)(15) language that states ". . . include, on request of the board, a written determination by the commission on the managerial, financial, and technical capacity of the applicant to operate the system for which assistance is being requested." New §50.31(b)(22) delegates to the executive director the certification of an organization that is installing plumbing in a "self-help" project in a county within 50 miles of an international border.

**FINAL REGULATORY IMPACT ANALYSIS DETERMINATION**

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rule is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The

adopted rule does not place any requirements on the regulated community not already required by law. In addition, the adopted rule is not a "major environmental rule" because it does not meet the applicability requirements of a "major environmental rule." The adopted rule does not exceed a standard set by federal law, does not exceed an express requirement of state law, nor does it exceed a requirement of a delegation agreement, and is not promulgated solely under the general authority of the agency. This rulemaking specifically implements provisions of SB 1421 and HB 1172. The rulemaking simply deletes a redundant reference to radioactive waste; requires the TNRCC to provide a written determination on the managerial, financial, and technical capacity of a political subdivision to operate a system for which financial assistance is being requested upon a request from the Texas Water Development Board and delegates to the executive director the certification of an organization that is installing plumbing in a "self-help" project in a county within 50 miles of an international border.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for the adopted rule amendment under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule amendment is to improve the language of the radiation control program requirement and to implement two of the provisions in SB 1421. The adopted rule amendment substantially advance the specific purpose by amending §50.31 to improve the language of the radiation control program requirement and to incorporate two of the new provisions in SB 1421. Promulgation and enforcement of the amendment will not burden private real property because the actions that are required by the rule amendment relate to internal actions of the commission and not to private real property owners. Therefore, this adoption will not constitute a takings under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the adopted rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP) nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adoption is not subject to the CMP.

#### HEARING AND COMMENTERS

A public hearing on the proposed amendment was held on July 6, 2000; however, no one appeared at the hearing to testify. No written comments were received concerning this chapter during the public comment period which closed on July 17, 2000.

#### STATUTORY AUTHORITY

The amendment is adopted under the Texas Radiation Control Act: THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103. The amendment is also adopted under TWC, §5.122, which provides authority for the commission to delegate to the executive director, by rule or order, its authority to act on certain uncontested matters; and §17.927, which authorizes the commission to make determinations of financial, managerial, and technical capacity of applicants for financial assistance for operation of a water

system; and Texas Civil Statutes, Article 6243-101, §3, which authorizes the commission to certify an organization, that does not have a plumbing license, to provide assistance on "self-help" water and sewer projects in certain counties.

#### §50.31. Purpose and Applicability.

(a) The purpose of this subchapter is to delegate authority to the executive director and to specify applications on which the executive director may take action on behalf of the commission.

(b) This subchapter applies to any application that is declared administratively complete before September 1, 1999. Any application that is declared administratively complete on or after September 1, 1999 is subject to Subchapter G of this chapter (relating to Action by the Executive Director). Except as provided by subsection (c) of this section, this subchapter applies to:

- (1) air quality permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);
  - (2) appointments to the board of directors of districts created by special law;
  - (3) certificates of adjudication;
  - (4) certificates of convenience and necessity;
  - (5) district matters under Chapters 49 - 66 of the Texas Water Code;
  - (6) districts' proposed impact fees, charges, assessments, or contributions approvable under Local Government Code, Chapter 395;
  - (7) extensions of time to commence or complete construction;
  - (8) industrial and hazardous waste permits;
  - (9) municipal solid waste permits;
  - (10) on-site waste water disposal system permits;
  - (11) radioactive material permits or licenses;
  - (12) rate matters for water and wastewater utilities under Texas Water Code, Chapters 11, 12, or 13;
  - (13) underground injection control permits;
  - (14) water rights permits;
  - (15) wastewater permits;
  - (16) weather modification measures permits;
  - (17) driller licenses under Texas Water Code, Chapter 32;
  - (18) pump installer licenses under Texas Water Code, Chapter 33;
  - (19) irrigator or installer registrations under Texas Water Code, Chapter 34;
  - (20) municipal management district matters under Local Government Code, Chapter 375;
  - (21) determination of the financial, managerial, and technical capacity of applicants for loans from the Texas Water Development Board, if requested by that agency; and
  - (22) certification of an organization that is installing plumbing in a "self-help" project, in a county any part of which is within 50 miles of an international border.
- (c) This subchapter does not apply to:

- (1) air quality standard permits under Chapter 116 of this title;
- (2) air quality permits under Chapter 122 of this title (relating to Federal Operating Permits);
- (3) air quality standard exemptions;
- (4) consolidated proceedings covering additional matters not within the scope of subsection (b) of this section;
- (5) district matters under Texas Water Code, Chapters 49 - 66, as follows:

(A) an appeal under Texas Water Code, §49.052 by a member of a district board concerning his removal from the board;

(B) an application under Texas Water Code, Chapter 49, Subchapter K, for the dissolution of a district;

(C) an application under Texas Water Code, §49.456 for authority to proceed in bankruptcy;

(D) an appeal under Texas Water Code, §54.239, of a board decision involving the cost, purchase, or use of facilities;

(E) an application under Texas Water Code, §49.351 for approval of a fire department or fire-fighting services plan; or

(F) an application under Texas Water Code, §54.030 for conversion of a district to a municipal utility district;

(6) emergency or temporary orders or temporary authorizations;

(7) actions of the executive director under Chapters 101, 111, 112, 113, 114, 115, 117, 118, and 119 of this title (relating to General Rules; Control of Air Pollution From Visible Emissions and Particulate Matter; Control of Air Pollution From Sulfur Compounds; Control of Air Pollution From Toxic Materials; Control of Air Pollution From Motor Vehicles; Control of Air Pollution From Volatile Organic Compounds; Control of Air Pollution From Nitrogen Compounds; Control of Air Pollution Episodes; and Control of Air Pollution From Carbon Monoxide);

(8) all compost facilities authorized to operate by registration under Chapter 332 of this title (relating to Composting);

(9) concentrated animal feeding operations (CAFOs) under Chapter 321, Subchapter K of this title (relating to Concentrated Animal Feeding Operations);

(10) an application for creation of a municipal management district under Local Government Code, Chapter 375; and

(d) Notwithstanding subsections (b) or (c) of this section, when the rules governing a particular type of application allow a motion for reconsideration, §50.39(b) - (f) of this title (relating to Motion for Reconsideration) applies. If the rules under which the executive director evaluates a registration application provide criteria for evaluating the application, the commission's reconsideration will be limited to those criteria.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 25, 2000.

TRD-200005976

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-0348

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## CHAPTER 205. GENERAL PERMITS FOR WASTE DISCHARGES

### SUBCHAPTER A. GENERAL PERMITS FOR WASTE DISCHARGES

30 TAC §§205.1 - 205.7

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to Chapter 205, §205.1, Definitions; §205.2, Purpose and Applicability; §205.3, Public Notice, Public Meetings, and Public Comment; §205.4, Authorizations and Notices of Intent; §205.5, Permit Duration, Amendment, and Renewal; §205.6, Annual Fee Assessments; and new §205.7, Additional Characteristics and Conditions for General Permits. Sections 205.1 - 205.4 and 205.6 are adopted *with changes* to the proposed text as published in the June 2, 2000, issue of the *Texas Register* (25 TexReg 5139). Sections 205.5 and 205.7 are adopted *without changes* and will not be republished.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The new and amended sections of Chapter 205 are adopted to implement House Bill (HB) 1283, which amended Texas Water Code (TWC), §26.040, and became law as an act of the 76th Texas Legislature, 1999. Among other changes, this adoption addresses the provisions of HB 1283 by removing the limitation that general permits cannot authorize discharges of more than 500,000 gallons in any 24-hour period; by providing that the commission may issue a general permit for storm water discharges without having to make the findings required by TWC, §26.040(a)(1) - (5) for other categories of discharges; and by adding a requirement that the commission deny or suspend a discharger's authority under a general permit if the commission determines that the discharger operates any facility for which the discharger's compliance history contains violations constituting a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violations. The new and amended sections also simplify the rule language, change the term "commission" to "executive director" or "agency," as appropriate, and clarify the requirements and procedures for issuing a general permit and obtaining authorization for discharge under a general permit.

#### SECTION BY SECTION DISCUSSION

Adopted §205.1, concerning Definitions, is amended to add a definition for "compliance history," which is a term used in §205.4(e), relating to the implementation of the HB 1283 changes to TWC, §26.040. Adopted §205.1 is also amended to add definitions for "notice of change or NOC" and "notice of termination or NOT," which are terms used in §205.4(h), relating to the certain procedures regarding general permits. The amendments also include the deletion of certain terms used in §205.2, because these terms are self-explanatory, and they are

to the executive director in a notice of change within a specified period of time prior to a change in previous information provided to the agency or any other change with respect to the nature or operations of the facility or the characteristics of the discharge. In cases where the general permit requires that an NOI be submitted, the general permit shall require that when the ownership of the facility changes or is transferred, a notice of termination be submitted by the present owner, and a new NOI be submitted by the new owner, not later than ten days prior to the change in ownership.

(i) When requested by a county or municipality, the commission may establish a provision in a general permit for notification by the discharger to a county judge or mayor of a municipality of NOIs that would allow discharges within their respective jurisdiction. If the executive director or commission denies authorization for a proposed discharge in the county or municipality, the executive director shall notify the county judge or mayor.

(j) The executive director's decisions on NOIs under this chapter are subject to §50.139 of this title (relating to Motion to Overtune Executive Director's Decision).

#### §205.6. Annual Fee Assessment.

A person authorized by a general permit shall pay an annual waste treatment inspection fee under Texas Water Code (TWC), §26.0291, consistent with §§305.501-305.507 of this title (relating to the Waste Treatment Inspection Fee Program) or as specified in the general permit; and may be subject to an annual watershed monitoring and assessment fee under TWC, §26.0135(h), consistent with §20.21 of this title (relating to Water Quality Assessment Fees) or as specified in the general permit.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 281. APPLICATIONS PROCESSING

### SUBCHAPTER A. APPLICATIONS PROCESSING

#### 30 TAC §§281.5, 281.21, 281.23

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to §281.5, Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits; §281.21, Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary; and §281.23, Application Amendment. Section 281.23 is adopted *with changes* to the proposed text as published in the June 16, 2000 issue of the *Texas Register* (25 TexReg 5807). Sections 281.5 and 281.21 are adopted *without changes* to the proposed text and will not be republished.

## BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The changes adopted in Chapter 281 are part of a larger rule-making to revise the agency's radiation control rules. This rule-making package has three major goals: (1) implement House Bill (HB) 1172, 76th Legislature, 1999, and its amendments to the Texas Health and Safety Code (THSC); (2) implement the recommendations of the TNRCC's Business Process Review Permit Implementation Team (BPR-PIT) to provide for consistency between the administrative procedures of the radiation control program and the other permitting programs within the agency; and (3) improve readability and understanding by reorganizing 30 TAC Chapter 336 (relating to Radioactive Substance Rules), by putting its requirements into plain English and by eliminating its redundancies and conflicts.

The BPR-PIT changes are part of an agency-wide effort to make programs consistent where feasible. The agency's management has mandated the consistency effort to make agency processes more efficient and "user friendly." Most of the license application process requirements in Chapter 336 can be modified to be more consistent with the permit application requirements of the rest of the agency. The TNRCC expects a consistent application process to be especially helpful for persons who have multiple permits/licenses from the TNRCC or are seeking consolidated permits. Major adopted changes are: (1) that the radiation control program will begin using the agency's definitions for major and minor amendments; and (2) the radiation control program application process will be moved completely from Chapter 336 to Chapter 281 (relating to Applications Processing) and Chapter 305 (relating to Consolidated Permits) with technical requirements remaining in Chapter 336 and amended to be consistent with agency administrative procedures.

The following amendments are adopted to make the application requirements of Chapter 281 applicable to the radiation program and to correct a cross-reference.

### SECTION BY SECTION DISCUSSION

The §281.5 title was amended to read "Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits" to be inclusive of radioactive material. The section was also amended to add "radioactive material" in another location to make the requirement also applicable to radioactive material. As recommended by the agency's BPR-PIT, programs have been encouraged to seek consistency in processes wherever possible, to simplify the regulatory process for both the regulated public and the agency. These adopted amendments make the radioactive material license application process the same as with other waste permit application processes. Since all administrative reviews have been consolidated within the agency, having a similar application format and content should make the administrative review of radioactive material license applications more efficient.

Section 281.21(f)(1) was amended by inserting "When the executive director is considering an application for a new license or license renewal to dispose of low-level radioactive waste from other persons and determines that the licensed activity may have a significant effect on the human environment, the executive director shall prepare or have prepared a written analysis of the effect on the environment" in place of deleted "The executive director shall prepare a written environmental analysis of a proposed license activity as required by Chapter

336 of this title (relating to Radioactive Substance Rules); and." This amendment is necessary to incorporate the language that needed to be carried over from concurrently repealed §336.203(a) of this title (relating to Environmental Analysis). Section 281.21(f)(2) was also amended to add "The environmental analysis, shall be included as part of the record of the commission's proceedings." This amendment is necessary to incorporate the language that needed to be carried over from concurrently repealed §336.203(b).

Section 281.23(a) was amended to delete "or Chapter 336 of this title (relating to Radioactive Substance Rules)." This amendment is necessary due to concurrently adopted changes to 30 TAC §305.62 and §336.2(58) and (61) by which the radiation control program adopts the definitions of major and minor amendment used by other agency programs, as discussed in the preamble on §305.62(c)(2). Another change to §281.23(b)(1) was made from proposal to adoption in the reference to the definition of major amendment, §336.2 was changed to §305.62 because the definition of major amendment has been moved from §336.2 to §305.62 in concurrent rulemaking. These adopted changes are one of the agency's BPR-PIT's recommendations to provide for greater consistency between programs within the agency. The changes are especially helpful for persons having more than one permit/license from this agency and for simplifying the processing of any consolidated permit/license application.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments to §§281.5, 281.21, and 281.23 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because there are no new requirements added. In summary, the rules simply amend the definition of low-level radioactive waste to be compatible with the NRC definition and make the radiation application requirements more consistent with those of the rest of the agency.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of these rule amendments is to implement the recommendations of the TNRC's BPR-PIT to provide for consistency between the procedures of the radiation control program and the other permitting programs within the agency. The rules substantially advance this specific purpose by facilitating the use of the agency's definitions for major amendments rather than a radiation control program specific definition and by moving part of the application process from Chapter 336 to Chapter 281 (relating to Applications Processing). Promulgation and enforcement of these adopted rules will not burden private real property which is the subject of the rules because there are no new rule requirements added.

**CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM** The commission has reviewed the adopted rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP) nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC 505.11. Therefore, the adoption is not subject to the CMP.

#### HEARING AND COMMENTERS

A public hearing on the proposed amendments was held on July 6, 2000; however, no one appeared at the hearing to testify. No written comments were received concerning this chapter during the public comment period which closed on July 17, 2000.

#### STATUTORY AUTHORITY

The amendments are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

#### §281.23. Application Amendment.

(a) No amendments to an application which would constitute a major amendment under the terms of §305.62 of this title (relating to Amendment) can be made by the applicant after the chief clerk has issued notice of the application and draft permit, unless new notice is issued which includes a description of the proposed amendments to the application. For purposes of this section, an attempted transfer of an application shall constitute an amendment requiring additional notice.

(b) For applications under Chapter 336 of this title (relating to Radioactive Substance Rules), an application amendment received after commencement of technical review, shall be processed as follows:

(1) The executive director shall determine whether the application amendment constitutes a major amendment as defined in §305.62 of this title or constitutes a substantial technical change to the application. Substantial technical changes may include changes in proposed waste disposal methods, enlargement or relocation of proposed areas to be licensed, transfer of an application to another applicant, significant changes in proposed facilities or operations, or other changes which will require extensive technical review.

(2) An application amendment that constitutes a major amendment or a substantial technical change shall be processed as a new and separate application.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Margaret Hoffman

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Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-0348

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CHAPTER 290. PUBLIC DRINKING WATER

## HEARINGS AND COMMENTERS

A public hearing was not held for this rulemaking. The public comment period for the rulemaking closed May 22, 2000. Written comments were submitted by the Texas Department of Transportation (TxDOT), the Lower Colorado River Authority (LCRA) and an individual attorney.

## ANALYSIS OF TESTIMONY

TxDOT stated the rulemaking had been reviewed and that no comments would be submitted.

LCRA expressed concerns that repealing language in §297.21(c) and placing the provision in §304.21, would restrict the benefits of that provision to a limited portion of the state.

The LCRA commented neither in support of or opposition to the rulemaking.

The individual commenter stated that the amendment to §304.21(d)(3) appears to be contrary to TWC, §11.142, which allows a person to impound up to 200 acre-feet normal capacity of water on his own land for domestic and livestock purposes without obtaining a permit. The commenter asserted that the commission is in effect attempting to usurp the authority of the legislature.

The commission disagrees because the purpose of the amendment of §304.21(d)(3) is to clarify a watermaster's authority to regulate water rights during times of drought, not to change the exemption from permitting for impoundments for domestic and livestock purposes. Section 304.21(d)(3) clarifies that in times of shortage, the watermaster may require owners of exempt domestic and livestock reservoirs to pass inflows sufficient for the use of other holders of domestic and livestock rights.

The proposed amendment does not affect the exemption in TWC, §11.142. The TWC creates special responsibilities for the commission in some circumstances. Where a watermaster has been appointed, the watermaster is to "regulate or cause to be regulated the controlling works of reservoirs and diversion works in times of water shortage, as is necessary to prevent the waste of water or its diversion, taking, storage, or use in excess of the quantities to which the holders of water rights are lawfully entitled." Texas Water Code, §11.327 and §11.454, provide the authority and duty of a watermaster to require passage of inflows by domestic and livestock users during water shortages. This action will protect the rights of domestic and livestock users to the equal priority which they share. This function, however, does not interfere with a person's right to impound water under TWC, §11.142, without a permit. No changes to the rule were made based on this comment.

## STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103 and §5.105, which authorize the commission to adopt rules necessary to carry out its responsibilities and duties under the TWC and other laws of Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2000.

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Margaret Hoffman

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For further information, please call: (512) 239-4712

## CHAPTER 305. CONSOLIDATED PERMITS

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to §305.1, Scope and Applicability; §305.2, Definitions; §305.42, Application Required; §305.45, Contents of Application for Permit; §305.54, Additional Requirements for Radioactive Material Licenses; §305.62, Amendment; §305.65, Renewal; §305.67, Revocation and Suspension upon Request or Consent; §305.121, Applicability; §305.123, Reservation in Granting Permit; §305.125, Standard Permit Conditions; and §305.127, concerning Conditions to be Determined for Individual Permits. Sections 305.1, 305.62, and 305.125 are adopted *with changes* to the proposed text as published in the June 16, 2000 issue of the *Texas Register* (25 TexReg 5809). Sections 305.2, 305.42, 305.45, 305.54, 305.65, 305.67, 305.121, 305.123, and 305.127 are adopted *without changes* and will not be republished.

## BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adopted changes to Chapter 305 are part of a larger package to revise the agency's radiation control rules. That rule package had three major goals: (1) implement House Bill (HB) 1172, 76th Legislature, 1999, and its amendments to the Texas Health and Safety Code (THSC); (2) implement the recommendations of the TNRCC's Business Process Review Permit Implementation Team (BPR-PIT) to provide for consistency between the administrative procedures of the radiation control program and the rest of the agency; and (3) improve readability and understanding by reorganizing 30 TAC Chapter 336 (relating to Radioactive Substance Rules), by putting its requirements into plain English and eliminating its redundancies and conflicts.

Changes to implement HB 1172 are: (1) amending the definition of low-level radioactive waste to be compatible with the United States Nuclear Regulatory Commission's (NRC's) definition; (2) incorporating the TNRCC's new authority to exempt from application of a rule; (3) adding an exemption to continue or expand on-site low-level radioactive waste disposal licensed before September 9, 1989; and (4) adding exemptions from radioactive material licensing requirements for facilities participating in the Voluntary Cleanup Program or Superfund cleanups.

The BPR-PIT changes are part of an agency-wide effort to make programs consistent where feasible. The agency's management had mandated the consistency effort to make agency processes more efficient and "user friendly." Most of the license application process requirements in Chapter 336 could be modified to be more consistent with the permit application requirements of the rest of the agency. The TNRCC expects a consistent application process to be especially helpful for persons who have multiple permits/licenses from the TNRCC or are seeking consolidated permits. Major adopted changes are: (1) that the radiation control program will begin using the agency's definitions for major and minor amendments; and (2) the radiation control program's license application process was moved for the most part from Chapter 336 to Chapter 281 (relating to Applications Processing)

and Chapter 305 (relating to Consolidated Permits) with technical requirements remaining in Chapter 336 and amended to be consistent with Chapter 305.

The amendments to Chapter 305 make conforming changes per HB 1172, implement recommendations of the agency's BPR-PIT, and improve the readability and understanding of the agency's radiation control program rules.

## SECTION BY SECTION DISCUSSION

### Subchapter A - General Provisions

Section 305.1(a) was amended to add "and the Texas Health and Safety Code, Chapters 361 and 401" and to delete "and the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7" to apply Chapter 305's requirements for applications, permits, and actions by the commission to activities regulated under THSC, Chapter 401, Radioactive Materials and Other Sources of Radiation and to update the citation for the Texas Solid Waste Disposal Act, Chapter 361. This amendment provides more consistency between the radiation control program and other waste programs regulated by the agency, as recommended by the agency's BPR-PIT without changing the substantive requirements currently in place. Minor editorial changes were made to §305.1 from proposal to adoption to conform with *Texas Register* formatting and style requirements.

Section 305.2 was amended to incorporate definitions contained in THSC, §401.003 and §401.004, as part of the actions to make the radiation control program's license application process consistent with the process used in the other permitting programs within the agency, in accordance with the agency's BPR-PIT recommendations. Amendments are also adopted to correct the citation for the Texas Solid Waste Disposal Act. The definition of "Permit" was amended to add "for radioactive material disposal" and "a radioactive material disposal license," to include radioactive material licenses, which will also be consistent with the definition of "Permit" in the agency's general definitions applicable to more than one regulatory program chapter in Chapter 3. The terms "permit" and "license" may be used interchangeably throughout the agency's rules. The definition of "Radioactive material" was amended to add "A naturally occurring or artificially produced solid, liquid, or gas that emits radiation spontaneously" and delete "A material which is identified as a radioactive material under Texas Civil Statutes, Article 4590f, as amended, and the rules adopted by the Texas Board of Health pursuant thereto." This amendment updates the definition and makes it consistent with the definition of this term in THSC, §401.003(18).

### Subchapter C - Application for Permit

Section 305.42(c) was amended to add "low-level radioactive waste disposal" to clarify that licenses issued under Chapter 336, Subchapter H are low-level radioactive waste disposal licenses, and to implement the HB 1172 addition of "low-level" to "radioactive waste." It was also amended to correct the cross-reference to Chapter 336, Subchapter H to reflect its newly adopted title.

Section 305.45(a) was amended to delete "Except for applications under Chapter 336 of this title (relating to Radioactive Substance Rules), each" to extend the agency's standard application content requirements to radioactive material license applications. The changes adopted throughout this section are intended

to consolidate most of the radioactive material license application program requirements with those of the other permitting programs. Chapter 336 is concurrently amended to move the application process information to Chapter 305, except most technical requirements remain in Chapter 336. Section 305.45(a)(8)(B)(ii) was amended to delete "and" and add "and radiological" to include radiological properties in the list of properties that must be characterized for applications related to waste or injected fluids. In addition, the term "radioactive" was changed to "radiological" to reflect proper usage. Section 305.45(a)(8)(C) was amended to add "§305.54 of this title (relating to Additional Requirements for Radioactive Material Licenses), §336.207 of this title (relating to General Requirements for the Issuance of a License), §336.513 of this title (relating to Technical Requirements for Active Disposal Sites), §336.617 of this title (relating to Technical Requirements for Inactive Disposal Sites), §336.705 of this title (relating to Content of Applications)," to reference all of the technical information required to be submitted in the supplemental technical report for radioactive material license applications. Former §305.45(c) was deleted as redundant with the preceding amendment.

Section 305.54 was amended to be consistent with the effort to improve the application process by moving radioactive material license application requirements to Chapter 305 (except most technical requirements will remain in Chapter 336). Former §305.54(b), was deleted as redundant with the requirements of §336.513, §336.617, and Chapter 336, Subchapter H. The remaining subsections were renumbered accordingly. Section 305.54(d) was moved unchanged from repealed §336.201(b) as part of the effort to improve applications processing by consolidating application requirements in Chapter 305. Adopted new §305.54(e) was moved from repealed §336.201(c). This new subsection (e) is unchanged with the exception of extending its requirements to include amendments, as part of the effort to improve applications processing by consolidating application requirements in Chapter 305. Adopted new §305.54(f) was moved from repealed §336.201(d) essentially unchanged, with the exception of deleting an obsolete date and a redundancy.

### Subchapter D - Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits

Section 305.62(b) was amended to change "§§305.41 - 305.53 of this title" to "Subchapter C of this chapter" to include radioactive material license application requirements in amendment applications, as part of the effort to improve applications processing by consolidating application requirements in Chapter 305.

Prior to this adoption, the radiation control licensing program used different definitions from the rest of the agency's permitting programs for major and minor amendment. The TNRC's BPR-PIT, as part of its recommendation to make the permitting process consistent within the agency wherever possible, recommended that the definitions for major and minor amendments in Chapter 336 be repealed and that the radiation control licensing program begin using the major and minor amendment definitions found in Subchapter D of Chapter 305.

According to former §305.62(c), which was made applicable to radiation control licensing, a major amendment is an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit; a minor amendment is an amendment to improve or maintain the permitted quality or method of disposal of waste, or injection of fluid if there is neither a significant increase of the quantity of waste or fluid to be discharged

or injected nor a material change in the pattern or place of discharge or injection. A minor amendment includes any other change to a permit issued under this chapter that would not cause, or relax a standard or criterion which may result in, a potential deterioration of quality of water in the state.

Prior to this adoption, major amendments to Chapter 336, Subchapter F licenses included transfers of a license to another person, enlargement of the disposal area, the addition of another disposal area and substantial changes to the nature of the waste or the method of disposal. Excluding transfers, these types of major amendment specified in repealed §336.2(58)(A)(ii) and (iii) were covered by the already existing language in §305.62(c)(1). Transfers do not "cause, or relax a standard or criterion which may result in, a potential deterioration of quality of water in the state." Because the rest of the permitting programs treat transfers separately or as minor amendments, the commission will process transfers for Subchapters F and G licenses under §305.64 (Transfer of Permits) with this adoption.

Also, under repealed §336.2(58)(C), amendments to Chapter 336, Subchapter H licenses that require an environmental analysis were classified as major amendments. In addition, a major amendment for a Chapter 336, Subchapter H low-level radioactive waste disposal facility receiving waste from other persons, was defined in repealed §336.2(58)(B) as an amendment that authorizes: a change in the type or concentration limits of wastes to be received; receipt of wastes from other states not authorized in the existing license; a change in the operator of the facility; closure and the final closure plan for the disposal site; or transfers the license to the custodial agency. Because of the uniqueness of regulating a low-level radioactive waste disposal facility licensed to receive waste from other persons, the commission retained these Chapter 336 specific, major amendment requirements and incorporated them into the definition of major amendment in §305.62(c)(1). However, a change was made from proposal to adoption. In Chapter 305, Consolidated Permits, Subchapter D, the language in §305.62(c)(1) was reorganized to clearly state that when a written environmental analysis is required for a Chapter 336, Subchapter H licensed facility amendment, it is a major amendment.

Section 305.62(i) was deleted to remove a requirement to file amendment applications in accordance with Chapter 336 rather than this chapter.

Section 305.65(b) was deleted to remove a statement that this section does not apply to renewal of radioactive material licenses. With this adoption, radioactive material license renewals are to be processed like other renewal applications submitted to this agency.

Section 305.67 was amended to add a new subsection (c) to clarify that the executive director may, upon request of an applicant, terminate a license if the applicant has complied with all of the applicable decommissioning requirements in Chapter 336, Subchapter G. This provides consistent procedures for use throughout the agency's permitting/licensing programs concerning voluntary termination.

#### Subchapter F - Permit Characteristics and Conditions

Section 305.121 was amended to add "radioactive material disposal" to apply characteristics and conditions for permits issued under other programs to radioactive material licenses. This standardization provides more consistency among programs, by locating basic conditions in one part of the rules and by standardizing the basic requirements. Standardization should make the

application process easier for persons having multiple permits/licenses from the agency and make consolidated permitting easier to implement.

Section 305.123 was amended to add "Texas Health and Safety Code, Chapters 361 and 401" and to delete "Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7" to allow the agency to incorporate requirements necessary to implement its responsibilities under THSC, Chapter 401, Radioactive Materials and Other Sources of Radiation, into existing permits and to update the citation for the Texas Solid Waste Disposal Act, Chapter 361.

Section 305.125(9) was amended to add a new subparagraph (C) to refer to the requirements in Chapter 336 for reporting noncompliances/incidents to the executive director. Section 305.125(10) was amended to add "and 401.063" to include the inspection and entry requirements under THSC, §401.063, as a standard permit condition. With the amendments to §305.125, the subject matter in §336.215 and §336.742 was addressed, and these sections in Chapter 336 were repealed. Section 305.125(11)(B) was amended to add "as otherwise required by Chapter 336 of this title or" to refer to Chapter 336 monitoring requirements and to exclude licenses issued under Chapter 336 from this subparagraph's Resource Conservation and Recovery Act (RCRA) reporting requirements under 40 Code of Federal Regulations §264.73(b)(9). Section 305.125(22) was taken from repealed §336.219, which required permittees to notify the executive director, in writing, following the filing of a voluntary or involuntary petition for bankruptcy. With this adoption, the bankruptcy notification requirement will be applicable to all permits subject to Chapter 305. This simple notification requirement allows the executive director to bring to the bankruptcy court's attention any environmental concerns which need to be addressed to protect health and the environment. Minor editorial changes were made to §305.125 from proposal to adoption to conform with *Texas Register* formatting and style requirements.

In the title of the §305.127, the words "To Be" were changed to lower case letters. Section 305.127(1) was amended to add a new subparagraph (G) that adds fixed term limits for radioactive material licenses. The agency adopts a limit, not to exceed ten years, for all radioactive material licenses other than those granted under Subchapter H of Chapter 336. The THSC, Chapter 401 is silent with regards to term limits for licenses not issued under Subchapter H, with the exception that the financial qualifications of the licensee are reviewed once every five years. This adoption does not change that financial review requirement. The adopted ten-year maximum term limit is consistent with the term limit for RCRA and Underground Injection Control (UIC) Class I injection well permits and reflects the current practice of the agency. This consistent approach to license term limits will allow permittees to consider the option of consolidating separate permits and licenses. Section 305.127(4)(A) was amended to add "to Chapter 336 of this title (relating to Radioactive Substance Rules) for radioactive material disposal standards," to include the technical requirements of Chapter 336 as conditions to which the commission will refer for determination of requirements to be included in the license. Section 305.127(4)(C) was amended to add "Chapter 336 of this title (relating to Radioactive Material Disposal Standards)" to incorporate by reference into the license, the technical requirements of Chapter 336 as license conditions.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments to Chapter 305 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the requirement to notify the agency in case of bankruptcy and the ten-year term limit for radioactive material licenses other than those granted under Chapter 336, Subchapter H, and additional application requirements in Chapter 305 are not expected to significantly increase the cost to licensees. The simple notification requirement in case of bankruptcy allows the executive director to bring to the bankruptcy court's attention any environmental concerns which need to be addressed to protect health and the environment. Similarly, the ten-year term limit allows permittees to consider the option of consolidating separate permits into one.

Prior to this adoption, the radiation control licensing program used different definitions from the rest of the agency's permitting programs for major and minor amendment. The TNRCC's BPR-PIT, as part of its recommendation to make the permitting process consistent within the agency wherever feasible, recommended that the definitions for major and minor amendments in Chapter 336 be repealed and that the radiation control licensing program begin using the major and minor amendment definitions found in Chapter 305, Subchapter D.

According to former §305.62(c), which was made applicable to radiation control licensing, a major amendment is "an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit." A minor amendment is "an amendment to improve or maintain the permitted quality or method of disposal of waste, or injection of fluid if there is neither a significant increase of the quantity of waste or fluid to be discharged or injected nor a material change in the pattern or place of discharge or injection." A minor amendment included any other change to a permit issued under this chapter that would not "cause, or relax a standard or criterion which may result in, a potential deterioration of quality of water in the state."

Prior to this adoption, major amendments to Chapter 336, Subchapter F licenses included transfers of a license to another person, enlargement of the disposal area, the addition of another disposal area, and substantial changes to the nature of the waste or the method of disposal. Excluding transfers, these types of major amendment specified in repealed §336.2(58)(A)(ii) and (iii) were covered by the already existing language in §305.62(c)(1). Transfers do not "cause, or relax a standard or criterion which may result in, a potential deterioration of quality of water in the state." Because the rest of the permitting programs treat transfers separately or as minor amendments, the commission will process transfers for Subchapters F and G licenses under §305.64 (Transfer of Permits) with this adoption.

Also, under repealed §336.58(C), amendments to Chapter 336, Subchapter H licenses that require an environmental

analysis were classified as major amendments. In addition, a major amendment for a Chapter 336, Subchapter H low-level radioactive waste disposal facility receiving waste from other persons, was defined in repealed §336.2(58)B as an amendment that authorizes: a change in the type or concentration limits of wastes to be received; receipt of wastes from other states not authorized in the existing license; a change in the operator of the facility; closure and the final closure plan for the disposal site; or transfers the license to the custodial agency. Because of the uniqueness of regulating a low-level radioactive waste disposal facility licensed to receive waste from other persons, the commission retained these Chapter 336 specific, major amendment requirements and incorporated them into the definition of major amendment in §305.62(c)(1). The proposal put the Chapter 336, Subchapter H licensed facility requirement for an amendment requiring an environmental analysis to be a major amendment into a new §305.62(c)(1)(A) and the remaining Subchapter H unique requirements for an amendment to be a major amendment into a new §305.62(c)(1)(B). In this adoption, instead of placing these former Chapter 336, Subchapter H unique requirements in two separate subparagraphs, they are grouped together in §305.62(c)(1). However, the adopted changes to the definitions of major and minor amendment are not substantially different from those formerly in Chapter 336.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rules is to: (1) implement HB 1172, 76th Legislature, 1999, and its amendments to the THSC; (2) implement the recommendations of the TNRCC's BPR-PIT to provide for consistency between the procedures of the radiation control program and the other permitting programs within the agency; and (3) improve readability and understanding by reorganizing Chapter 336 (relating to Radioactive Substance Rules), putting its requirements into plain English and eliminating redundancies and conflicts. The rules substantially advance these specific purposes by incorporating these changes: amending the definition of low-level radioactive waste to be compatible with the NRC's definition; incorporating the TNRCC's new exemption from rule authority; adding an exemption to continue or expand on-site low-level radioactive waste disposal licensed before September 9, 1989; and adding exemptions from radioactive material licensing requirements for facilities participating in the Voluntary Cleanup Program or Superfund cleanups; and by beginning to use the agency's definitions for major and minor amendments rather than radiation control program specific definitions; by moving the application process from Chapter 336 to Chapter 281 (relating to Applications Processing) and Chapter 305 (relating to Consolidated Permits) and amending the application process to be consistent with other agency application procedures; by making Chapter 336 more understandable by partially reorganizing the chapter; and by clarifying wording, eliminating unnecessary or repetitive language, and improving readability. Promulgation and enforcement of these rules will not burden private real property.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the adopted rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program

(CMP) nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adoption is not subject to the CMP.

#### HEARING AND COMMENTERS

A public hearing on the proposed amendments was held on July 6, 2000; however, no one appeared at the hearing to testify. No written comments were received concerning this chapter during the comment period which closed on July 17, 2000.

#### SUBCHAPTER A. GENERAL PROVISIONS

##### 30 TAC §305.1, §305.2

##### STATUTORY AUTHORITY

The amendments are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

##### §305.1. Scope and Applicability.

(a) The provisions of this chapter set the standards and requirements for applications, permits, and actions by the commission to carry out the responsibilities for management of waste disposal activities under the Texas Water Code, Chapters 26, 27, and 28, and the Texas Health and Safety Code, Chapters 361 and 401.

(b) The national pollutant discharge elimination system (NPDES) program, as delegated to the State of Texas, requires permits for the discharge of pollutants from any point source to waters in the state. Such permits are designated as Texas pollutant discharge elimination system (TPDES). The terms "NPDES," "pollutant," "point source," and "waters in the state" are defined in Texas Water Code, §26.001.

(1) The following are point sources requiring TPDES permits for discharges:

(A) concentrated animal feeding operations as defined in Chapter 321, Subchapter B of this title (relating to Commercial Livestock and Poultry Production Operations);

(B) concentrated aquatic animal production facilities as defined in 40 Code of Federal Regulations (CFR) §122.24;

(C) discharges into aquaculture projects as set forth in 40 CFR §122.25;

(D) discharges from separate storm sewers as set forth in 40 CFR §122.26; and

(E) silvicultural point sources as defined in 40 CFR §122.27.

(2) The TPDES permit program also applies to owners or operators of any treatment works treating domestic sewage, unless all requirements implementing the Clean Water Act (CWA), §405(d), applicable to the treatment works treating domestic sewage are included in a permit issued under the appropriate provisions of Subtitle C, the Federal Solid Waste Disposal Act, the Safe Drinking Water Act, Part C, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under state permit programs approved by the regional administrator as adequate to assure compliance with the CWA, §405.

(3) The executive director may designate any person subject to the standards for sewage sludge use and disposal as a "treatment works treating domestic sewage" as defined in §305.2 of this title (relating to Definitions), where the executive director finds that a permit

is necessary to protect public health and the environment from the adverse effects of sewage sludge or to ensure compliance with the technical standards for sludge use and disposal developed under the CWA, §405(d). Any person designated as a treatment works treating domestic sewage shall submit an application for a permit within 120 days of being notified by the executive director that a permit is required. The executive director's decision to designate a person as a treatment works treating domestic sewage shall be stated in the fact sheet or statement of basis for the permit.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 25, 2000.

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Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-0348

#### SUBCHAPTER C. APPLICATION FOR PERMIT

##### 30 TAC §§305.42, 305.45, 305.54

##### STATUTORY AUTHORITY

The amendments are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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#### SUBCHAPTER D. AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS

##### 30 TAC §§305.62, 305.65, 305.67

##### STATUTORY AUTHORITY

The amendments are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101,

401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

**§305.62. Amendment.**

(a) Amendments generally. A change in a term, condition, or provision of a permit requires an amendment, except under §305.70 of this title (relating to Municipal Solid Waste Class I Modifications), under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), under §305.66 of this title (relating to Corrections of Permits), and under §305.64 of this title (relating to Transfer of Permits). The permittee or an affected person may request an amendment. If the permittee requests an amendment, the application shall be processed under Chapter 281 of this title (relating to Applications Processing). If the permittee requests a modification of a solid waste permit, the application shall be processed under §305.69 of this title. If the permittee requests a modification of a municipal solid waste permit, the application shall be processed in accordance with §305.70 of this title. If an affected person requests an amendment, the request shall be submitted to the executive director for review. If the executive director determines the request is not justified, the executive director will respond within 60 days of submittal of the request, stating the reasons for that determination. The person requesting an amendment may petition the commission for a review of the request and the executive director's recommendation. If the executive director determines that an amendment is justified, the amendment will be processed under subsections (d) and (f) of this section.

(b) Application for amendment. An application for amendment shall include all requested changes to the permit. Information sufficient to review the application shall be submitted in the form and manner and under the procedures specified in Subchapter C of this chapter (relating to Application for Permit). The application shall include a statement describing the reason for the requested changes.

(c) Types of amendments.

(1) A major amendment is an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit. In case of a license issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste), a major amendment is one which:

- (A) authorizes a change in the type or concentration limits of wastes to be received;
- (B) authorizes receipt of wastes from other states not authorized in the existing license;
- (C) authorizes a change in the operator of the facility;
- (D) authorizes closure and the final closure plan for the disposal site;
- (E) transfers the license to the custodial agency; or
- (F) authorizes a change which has a significant effect on the human environment and for which the executive director has prepared a written environmental analysis or has determined that an environmental analysis is required.

(2) A minor amendment is an amendment to improve or maintain the permitted quality or method of disposal of waste, or injection of fluid if there is neither a significant increase of the quantity of waste or fluid to be discharged or injected nor a material change in the pattern or place of discharge of injection. A minor amendment includes any other change to a permit issued under this chapter that will not cause or relax a standard or criterion which may result in a potential

deterioration of quality of water in the state. A minor amendment may also include, but is not limited to:

(A) except for Texas Pollutant Discharge Elimination System (TPDES) permits, changing an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date; and

(B) except for TPDES permits, requiring more frequent monitoring or reporting by the permittee.

(3) Minor modifications for TPDES permits. The executive director may modify a TPDES permit to make corrections or allowances for changes in the permitted activity listed in this subsection (see also §50.45 of this title (relating to Corrections to Permits)). Notice requirements for a minor modification are in §39.151 of this title (relating to Application for Wastewater Discharge Permit, including Application for the Disposal of Sewage Sludge or Water Treatment Sludge). Minor modifications to TPDES permits may only:

- (A) correct typographical errors;
- (B) require more frequent monitoring or reporting by the permittee;
- (C) change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date;

(D) change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation before discharge under §305.534 of this title (relating to New Sources and New Dischargers);

(E) delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except within permit limits;

(F) when the permit becomes final and effective on or after March 9, 1982, add or change provisions to conform with §§305.125, 305.126, 305.531(1), 305.535(c)(1)(B), and 305.537 of this title (relating to Standard Permit Conditions; Additional Standard Permit Conditions for Waste Discharge Permits; Establishing and Calculating Additional Conditions and Limitations for TPDES Permits; Bypasses from TPDES Permitted Facilities; Minimum Requirements for TPDES Permitted Facilities; and Reporting Requirements for Planned Physical Changes to a Permitted Facility); or

(G) incorporate enforceable conditions of a publicly owned treatment works pretreatment program approved under the procedures in 40 CFR §403.11, as adopted by §315.1 of this title (relating to General Pretreatment Regulations for Existing and New Sources of Pollution).

(d) Good cause for amendments. If good cause exists, the executive director may initiate and the commission may order a major amendment, minor amendment, modification, or minor modification to a permit and the executive director may request an updated application if necessary. Good cause includes, but is not limited to:

(1) there are material and substantial changes to the permitted facility or activity which justify permit conditions that are different or absent in the existing permit;

(2) information, not available at the time of permit issuance, is received by the executive director, justifying amendment of existing permit conditions;

(3) the standards or regulations on which the permit or a permit condition was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued;

(4) an act of God, strike, flood, material shortage, or other event over which the permittee has no control and for which there is no reasonably available alternative may be determined to constitute good cause for amendment of a compliance schedule;

(5) for underground injection wells, a determination that the waste being injected is a hazardous waste as defined under §335.1 of this title (relating to Definitions) either because the definition has been revised, or because a previous determination has been changed; and

(6) for Underground Injection Control (UIC) area permits, any information that cumulative effects on the environment are unacceptable.

(e) Amendment of land disposal facility permit. When a permit for a land disposal facility used to manage hazardous waste is reviewed by the commission under §305.127(1)(B)(iii) of this title (relating to Conditions to be Determined for Individual Permits), the commission shall modify the permit as necessary to assure that the facility continues to comply with currently applicable requirements of this chapter and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

(f) Amendment initiated by the executive director. If the executive director determines to file a petition to amend a permit, notice of the determination stating the grounds therefor and a copy of a proposed amendment draft shall be personally served on or mailed to the permittee at the last address of record with the commission. This notice should be given at least 15 days before a petition is filed with the commission. However, such notice period shall not be jurisdictional.

(g) Amendment initiated permit expiration. The existing permit will remain effective and will not expire until commission action on the application for amendment is final. The commission may extend the term of a permit when taking action on an application for amendment.

(h) Amendment application considered a request for renewal. For applications filed under the Texas Water Code, Chapter 26, an application for a major amendment to a permit may also be considered as an application for a renewal of the permit if so requested by the applicant.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER F. PERMIT CHARACTERISTICS AND CONDITIONS

### 30 TAC §§305.121, 305.123, 305.125, 305.127

#### STATUTORY AUTHORITY

The amendments are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

#### §305.125. Standard Permit Conditions.

Conditions applicable to all permits issued under this chapter, and which shall be incorporated into each permit expressly or by reference to this chapter are as follows.

(1) The permittee has a duty to comply with all permit conditions. Failure to comply with any permit condition is a violation of the permit and statutes under which it was issued and is grounds for enforcement action, for permit amendment, revocation or suspension, or for denial of a permit renewal application or an application for a permit for another facility.

(2) The permittee must apply for an amendment or renewal before the expiration of the existing permit in order to continue a permitted activity after the expiration date of the permit. Authorization to continue such activity terminates upon the effective denial of said application.

(3) It is not a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the permit conditions.

(4) The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation which has a reasonable likelihood of adversely affecting human health or the environment.

(5) The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) installed or used by the permittee to achieve compliance with the permit conditions. For Underground Injection Control permits, proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the permit conditions.

(6) The permittee shall furnish to the executive director, upon request and within a reasonable time, any information to determine whether cause exists for amending, revoking, suspending, or terminating the permit, and copies of records required to be kept by the permit.

(7) The permittee shall give notice to the executive director before physical alterations or additions to the permitted facility if such alterations or additions would require a permit amendment or result in a violation of permit requirements.

(8) Authorization from the commission is required before beginning any change in the permitted facility or activity that would result in noncompliance with other permit requirements.

(9) The permittee shall report any noncompliance to the executive director which may endanger human health or safety, or the environment.

(A) Such information shall be provided orally within 24 hours from the time the permittee becomes aware of the noncompliance. A written submission shall also be provided within five days of

the time the permittee becomes aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

(B) The following must be reported within 24 hours under this paragraph.

(i) any unanticipated bypass which exceeds any effluent limitation in a TPDES permit.

(ii) violation of a maximum daily discharge limitation for any pollutants listed in a TPDES permit to be reported within 24 hours.

(C) Holders of radioactive material licenses issued under Chapter 336 of this title (relating to Radioactive Substance Rules) shall report noncompliances/incidents to the executive director according to the requirements of §336.335 of this title (relating to Reporting Requirements for Incidents).

(10) Inspection and entry shall be allowed under Texas Water Code, Chapters 26 - 28, Texas Health and Safety Code, §§361.032 - 361.033, 361.037, and 401.063, and 40 Code of Federal Regulations (CFR), §122.41(i). The statement in Texas Water Code, §26.014 that commission entry of a facility shall occur in accordance with an establishment's rules and regulations concerning safety, internal security, and fire protection is not grounds for denial or restriction of entry to any part of the facility, but merely describes the commission's duty to observe appropriate rules and regulations during an inspection.

(11) Monitoring and reporting requirements are as follows.

(A) Monitoring samples and measurements shall be taken at times and in a manner so as to be representative of the monitored activity.

(B) Except as otherwise required by Chapter 336 of this title or for records of monitoring information required by a permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR Part 503), monitoring and reporting records, including strip charts and records of calibration and maintenance, copies of all records required by the permit, records of all data used to complete the application for this permit, and the certification required by 40 CFR §264.73(b)(9) shall be retained at the facility site for a period of three years from the date of the record or sample, measurement, report, application, or certification. This period shall be extended at the request of the executive director.

(C) Records of monitoring activities shall include:

(i) date, time and place of sample or measurement;

(ii) identity of individual who collected the sample or made the measurement;

(iii) date of analysis;

(iv) identity of the individual and laboratory who performed the analysis;

(v) the technique or method of analysis; and

(vi) the results of the analysis or measurement.

(12) Any noncompliance other than that specified in this section, or any required information not submitted or submitted incorrectly shall be reported to the executive director as promptly as possible.

(13) A permit may be transferred only according to the provisions of §305.64 of this title (relating to Transfer of Permits) and §305.97 of this title (relating to Action on Application for Transfer).

(14) All reports and other information requested by the executive director shall be signed by the person and in the manner required by §305.128 of this title (relating to Signatories to Reports).

(15) A permit may be amended, suspended and reissued, or revoked for cause. The filing of a request by the permittee for a permit amendment, suspension and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(16) A permit does not convey any property rights of any sort, or any exclusive privilege.

(17) Monitoring results shall be provided at the intervals specified in the permit.

(18) Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date.

(19) Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application, or in any report to the executive director, it shall promptly submit such facts or information.

(20) The permittee is subject to administrative, civil, and criminal penalties, as applicable, under Texas Water Code, §§26.136, 26.212, and 26.213 for violations including but not limited to the following:

(A) negligently or knowingly violating CWA, §§301, 302, 306, 307, 308, 318, or 405, or any condition or limitation implementing any sections in a permit issued under CWA, §402, or any requirement imposed in a pretreatment program approved under CWA, §402(a)(3) or (b)(8);

(B) falsifying, tampering with, or knowingly rendering inaccurate any monitoring device or method required to be maintained under a permit; or

(C) knowingly making any false statement, representation, or certification in any record or other document submitted or required to be maintained under a permit, including monitoring reports or reports of compliance or noncompliance.

(21) For hazardous waste management facility permits, the executive director may require the permittee to establish and maintain an information repository at any time, based on the factors set forth in 40 CFR, §124.33(b), as amended through December 11, 1995, at 60 FedReg 63417. The information repository will be governed by the provisions in 40 CFR §124.33(c) - (f), as amended through December 11, 1995, at 60 FedReg 63417.

(22) Notice of bankruptcy.

(A) Each permittee shall notify the executive director, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (Bankruptcy) of the United States Code (11 USC) by or against:

(i) the permittee;

(ii) an entity (as that term is defined in 11 USC, §101(14)) controlling the permittee or listing the permit or permittee as property of the estate; or

(iii) an affiliate (as that term is defined in 11 USC, §101(2)) of the permittee.

(B) This notification must indicate:

(i) the name of the permittee;

(ii) the permit number(s);

(iii) the bankruptcy court in which the petition for bankruptcy was filed; and

(iv) the date of filing of the petition.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 25, 2000.

TRD-200005981

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: September 14, 2000

Proposal publication date: June 16, 2000

For further information, please call: (512) 239-0348

## SUBCHAPTER M. WASTE TREATMENT INSPECTION FEE PROGRAM

### 30 TAC §305.502, §305.503

The Texas Natural Resource Conservation Commission (commission or TNRCC) adopts amendments to §305.502, Definitions and Abbreviations, and §305.503, Fee Assessment. Section 305.503 is adopted *with changes* to the proposed text as published in the April 7, 2000 issue of the *Texas Register* (25 TexReg 2969). Section 305.502 is adopted *without changes* and will not be republished.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adopted amendments incorporate recent legislative changes impacting fees for aquaculture production facilities. Senate Bill (SB) 873, 76th Legislature, 1999, added §26.0292 to the Texas Water Code (TWC) which directs that combined fees for the waste treatment inspection program and the Clean Rivers Program may not total more than \$5,000 in any year. Prior to adoption, annual waste treatment inspection fees for industrial dischargers, including aquaculture facilities, were established with a cap not to exceed \$25,000.

The commission adopts amendments to §305.503 to include a provision, in subsection (g)(3), capping the waste treatment inspection fee for aquaculture production facilities at \$5,000. Currently, no fee is assessed for aquaculture facilities for the Clean Rivers Program, under 30 TAC §220.21(d). The commission determined that because the number of aquaculture facilities with active individual wastewater discharge permits is relatively small, the amount of funds that would be collected by the Clean Rivers Program through a redistribution of the fees for aquaculture production facilities is insignificant. Therefore, the Clean Rivers Program fee for aquaculture facilities will remain at zero, and the waste treatment inspection fee was set so as not to exceed \$5,000 annually.

Senate Bill 873 also directs that the commission by rule provide that fees charged among aquaculture facilities be reasonably assessed according to the pollutant load of the facility. The current fee rate schedule is based in part upon the assignment of "points" as a measure of pollutant potential, flow volume, contamination, and pollutant parameters (e.g. ammonia, suspended solids, oxygen demand, etc.). Under the adopted rules, fees for aquaculture facilities will continue to be assessed according to this point system. A separate fee rate schedule was not proposed for aquaculture facilities because pollutant loadings and pollutant potential from these facilities were not determined to be significantly different than those from many other industries for which fees are calculated. In order to distribute the waste treatment inspection fee more proportionately among aquaculture facilities, the adopted rule, in §305.503(g)(3), provides that in determining the flow volume points for a facility, the flow for the facility shall be the permitted annual average flow for the facility or, if the facility's permit does not have an annual average flow limitation, the flow shall be the projected annual average flow for the facility. The projected annual average flow, for the period from September 1, 2000 to August 31, 2001, for a facility that does not have an annual average flow permit limitation shall be submitted to the executive director by November 1, 2000 and shall be signed and certified as required by 30 TAC §305.44. In subsequent years, if the facility's permit does not have an annual average flow limitation, the facility's projected annual average flow for the upcoming period from September 1 to August 31 shall be submitted to the executive director by June 30 and shall be signed and certified as required by §305.44. This change will lower the waste treatment inspection fee for those facilities that only discharge a limited number of days per year, which is typical for certain types of aquaculture production facilities.

#### SECTION BY SECTION DISCUSSION

Adopted §305.502 added a definition for aquaculture production facilities, corrected typographical errors, incorporated minor style changes for consistency with the *Texas Register* format, and improved readability.

Adopted §305.503 was revised to cap the annual waste treatment inspection fee for aquaculture production facilities at \$5,000. Adopted §305.503 was also revised to provide that in determining flow volume points for aquaculture production facilities, the flow for the facility shall be the annual average flow for the facility or, if the facility's permit does not have an annual average flow limitation, the flow shall be the projected annual average flow for the facility. The projected annual average flow, for the period from September 1, 2000 to August 31, 2001, for a facility that does not have an annual average flow permit limitation shall be submitted to the executive director by November 1, 2000 and shall be signed and certified as required by §305.44. In subsequent years, if the facility's permit does not have an annual average flow, the facility's projected annual average flow for the upcoming period from September 1 to August 31 shall be submitted to the executive director by June 30 and shall be signed and certified as required by §305.44. In addition, the amendment included minor style changes for consistency with the *Texas Register* format and to improve readability.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of "major environmental rule." The specific intent of this rulemaking was

of overflow, flooding, or similar conditions that could result in either the release of exotic species that are regulated by the TPWD or that would result in the violation of a quarantine condition imposed by the TPWD. In such cases, the facility may discharge effluent in excess of the permitted flow rates, but only to the extent necessary to comply with an emergency plan that is approved by the TPWD, and the following provisions shall also apply.

(A) The facility is not subject to effluent limitations, discharge flow limitations, and other effluent monitoring requirements in the permit for discharges that comply with an emergency plan approved by the TPWD.

(B) A facility shall notify the appropriate TNRCC regional office at least 48 hours, or as soon as practicable, prior to initiating any action under an emergency plan in response to an emergency event, such as landfall of a hurricane, and shall notify the regional office as soon as practicable following initiation of the emergency plan.

(C) The facility shall control discharges made under an emergency plan in the most environmentally sound manner that is practicable.

(D) Within 30 days following initiation of the emergency plan, the facility shall submit a written report to the appropriate TNRCC regional office that includes the following information:

- (i) the reason for initiation of the plan;
- (ii) actions taken to prevent or mitigate impacts of the discharge to the receiving stream;
- (iii) volumes of wastewater discharged;
- (iv) the dates that discharges occurred; and
- (v) a general summary of receiving stream conditions at the time of the discharges.

(E) The facility is responsible for demonstrating that the discharges were necessary and that conditions required initiation of the emergency plan.

(5) A facility engaged in the propagation or rearing of shrimp which exhibit one or more manifestations of disease as defined by TPWD in 31 TAC §57.111 and §69.75 shall immediately report the apparent disease to the TNRCC regional office and Wastewater Permitting Section, and to TPWD, and shall comply with 31 TAC §57.114 and §69.77. The executive director shall be immediately notified of the results of any analyses by a shellfish disease specialist. Any actions which are deemed necessary by the discharger to prevent transmission of the disease to aquatic life endemic to waters in the state shall be implemented as soon as possible. The executive director may require suspension or termination of the discharge of effluent from infected portions of the facility as is necessary to protect aquatic life in the receiving stream from potential adverse effects.

(6) A facility required to hold a permit from TPWD regulating the possession and sale of exotic fish and shellfish shall immediately notify the TNRCC regional office and Wastewater Permitting Section if the TPWD places the facility under quarantine condition. There shall be no discharge during the quarantine period, except upon approval by the executive director and TPWD. The executive director and TPWD may suspend or terminate the prohibition on discharge to allow for implementation of the facility's emergency plan approved by TPWD, following the lifting of the quarantine condition by TPWD, or based on other relevant factors.

(7) Except as provided in paragraph (4) of this subsection, a facility shall comply with the terms and conditions in its individual

TPDES permit, which shall include conditions related to suspended solids based on levels and measures adequate to prevent:

(A) a potential significant adverse response in aquatic organisms, changes in flow patterns of receiving waters, or excessive sedimentation of bays; and

(B) a potential significant adverse response in aquatic plants caused by reduction of light due to suspended solids in discharges.

(b) All new, amendment, or renewal applications for an individual TPDES permits to which the requirements of this section apply are subject to review by a three-member application review committee comprised of one representative each from the executive director, TPWD, and TDA.

(c) In considering whether to approve an application for a new, amended, or renewed individual TPDES permit for a commercial aquaculture facility located within the coastal zone and engaged in the production of shrimp, the commission shall consider all relevant factors, including:

(1) the site-assessment environmental report provided by the applicant under subsection (a)(1)(A) of this section;

(2) any sensitive aquatic habitat guidelines established by TPWD; and

(3) any comments on the application provided by the three-member application review committee referred to in subsection (b) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2000.

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Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: September 13, 2000

Proposal publication date: May 5, 2000

For further information, please call: (512) 239-6087

## CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to §336.1, Scope and General Provisions; §336.2, Definitions; §336.5, Exemptions; §336.103, Schedule of Fees for Subchapter H Licenses; §336.105, Schedule of Fees for Subchapter F Licenses; §336.107, Annual License Fee Due Date and Period Covered; §336.301, Purpose and Scope; §336.308, Determination of Internal Exposure; §336.313, Dose Limits for Individual Members of the Public; §336.341, General Recordkeeping Requirements for Licensees; §336.352, Reports of Exposures, Radiation Levels, and Concentrations of Radioactive Material Exceeding the Limits; §336.355, Reports of Individual Monitoring; §336.405, Notifications and Reports to Individuals; §336.513, Technical Requirements for Active Disposal Sites; §336.601, Applicability; §336.607, Criteria for License Termination under Restricted Conditions; §336.613, Additional Requirements; §336.701, Scope and General Provisions;

§336.702, Definitions; §336.705, Content of Application; and §336.718, Application for Renewal or Closure.

The TNRCC also adopts new §336.201, Purpose and Scope; §336.203, License Required; §336.205, Application Requirements; §336.207, General Requirements for Issuance of a License; §336.209, Issuance of License; §336.211, General Requirements for Radioactive Material Disposal; §336.213, Method of Obtaining Approval of Proposed Disposal Procedures; §336.215, Disposal by Release into Sanitary Sewerage; §336.217, Disposal by Burial in Soil; §336.219, Disposal by Release into Septic Tanks; §336.221, Treatment or Disposal by Incineration; §336.223, Disposal in Underground Injection Control Class I Injection Wells; §336.225, Disposal of Specific Wastes; §336.229, Prohibition of Dilution; §336.331, Transfer of Radioactive Material; §336.332, Preparation of Radioactive Material for Transport; §336.335, Reporting Requirements for Incidents; §336.336, Tests; §336.338, General Recordkeeping Requirements for Disposal; §336.339, Form of Records; and §336.501, Scope and General Provisions; §336.602, Definitions; §336.615, Inactive Disposal Sites; §336.617, Technical Requirements for Inactive Disposal Sites; §336.619, Financial Assurance for Decommissioning; §336.621, Recordkeeping for Decommissioning; §336.623, Financial Assurance for Control and Maintenance; §336.625, Expiration and Termination of Licenses; and §336.627, Appendix A. Radionuclide Quantities for Use in Determining Financial Assurance for Decommissioning.

The TNRCC also adopts the repeal of existing §336.201, Additional Application Requirements; §336.203, Environmental Analysis; §336.205, Transfer of Radioactive Material; §336.207, Preparation of Radioactive Material for Transport; §336.209, Records and Reports; §336.210, Complaints; §336.211, Reporting Requirements for Incidents; §336.213, Tests; §336.215, Inspections; §336.219, Notice of Bankruptcy; §336.331, General Requirements for Waste Disposal; §336.332, Method of Obtaining Approval of Proposed Disposal Procedures; §336.333, Disposal by Release into Sanitary Sewerage; §336.334, Disposal by Burial in Soil; §336.335, Disposal by Release into Septic Tanks; §336.336, Treatment or Disposal by Incineration; §336.337, Disposal of Specific Wastes; §336.338, Transfer for Disposal at Licensed Land Disposal Facility and Manifests; §336.339, Texas Department of Health Inspection and Regulation of Shipments of Radioactive Waste; §336.340, Compliance with Environmental and Health Protection Regulations; §336.348, Records of Waste Disposal; §336.349, Form of Records; §336.351, Notification of Incidents; §336.361, Appendix D. Requirements for Receipt of Low-Level Radioactive Waste for Disposal at Licensed Land Disposal Facilities and Manifests; §336.501, Scope and General Provisions; §336.502, Definitions; §336.503, Filing of Application; §336.504, General Requirements for Issuance of a License; §336.505, Issuance of License; §336.512, Technical Requirements for Inactive Disposal Sites; §336.514, Financial Assurance for Decommissioning; §336.515, Recordkeeping for Decommissioning; §336.517, Financial Assurance for Control and Maintenance; §336.519, Expiration and Termination of Licenses; §336.521, Appendix A. Radionuclide Quantities for Use in Determining Financial Assurance for Decommissioning; and §336.742, Inspections of Land Disposal Facilities.

Sections 336.1, 336.2, 336.5, 336.211, 336.335, 336.341, 336.501, 336.613, 336.617, 336.621, 336.625, and 336.701 are adopted *with changes* to the proposed text as published in the June 16, 2000, issue of the *Texas Register* (25 TexReg 5817). Sections 336.103, 336.105, 336.107, 336.201, 336.203,

336.205, 336.207, 336.209, 336.213, 336.215, 336.217, 336.219, 336.221, 336.223, 336.225, 336.229, 336.301, 336.308, 336.313, 336.331, 336.332, 336.336, 336.338, 336.339, 336.352, 336.355, 336.405, 336.513, 336.601, 336.602, 336.607, 336.615, 336.619, 336.623, 336.627, 336.702, 336.705, and 336.718 and the repeals, 336.201, 336.203, 336.205, 336.207, 336.209 - 336.211, 336.213, 336.215, 336.219, 336.331 - 336.340, 336.348, 336.349, 336.351, 336.361, 336.501 - 336.505, 336.512, 336.514, 336.515, 336.517, 336.519, 336.521, and 336.742 are adopted *without changes* and will not be republished.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adopted rule package has three major goals: (1) implement House Bill (HB) 1172, 76th Legislature, 1999, and its amendments to the Texas Health and Safety Code (THSC); (2) implement the recommendations of the TNRCC's Business Process Review Permit Implementation Team (BPR-PIT) to provide for consistency between the administrative procedures of the radiation control program and the other permitting programs of the agency; and (3) improve readability and understanding by reorganizing Chapter 336, putting its requirements into plain English, and eliminating its redundancies and conflicts.

Changes to implement HB 1172 are: (1) amending the definition of low-level radioactive waste to be compatible with the United States Nuclear Regulatory Commission's (NRC's) definition; (2) incorporating the TNRCC's new authority to exempt from application of a rule; (3) adding an exemption to continue or expand on-site low-level radioactive waste disposal licensed before September 9, 1989; and (4) adding exemptions from radioactive material licensing requirements for facilities participating in the Voluntary Cleanup Program or Superfund cleanups.

The BPR-PIT changes are part of an agency-wide effort to make programs consistent where feasible. The agency's management has mandated the consistency effort to make agency processes more efficient and "user friendly." Major adopted changes are: (1) that the radiation control program will begin using the agency's definitions for major and minor amendments; and (2) the radiation control program application process will be moved from Chapter 336 to Chapter 281 (relating to Applications Processing) and Chapter 305 (relating to Consolidated Permits) with technical requirements remaining in Chapter 336 and amended to be consistent with agency administrative procedures.

Lastly, Chapter 336 is made more understandable by partially reorganizing the chapter. Existing Subchapter C is repealed, with those sections being moved to more appropriate locations, or eliminated if redundant with other rules. The agency also corrected discrepancies within the chapter. For example, Subchapter C reporting requirements were moved to and merged with Subchapter D reporting requirements. Additionally, the application process was moved to and merged with the agency's application process requirements in Chapters 281 and 305. The disposal requirements in Subchapter D were moved to form a new Subchapter C, General Disposal Requirements. All of the decommissioning requirements were moved to Subchapter G, including inactive disposal site clean-up requirements. The commission also made distinctions between exemptions and requirements outside TNRCC's jurisdiction in §336.1 and §336.5.

In addition to the reorganization, wording in some areas was clarified. The changes are as follows: (1) putting requirements into

plain English, thereby resolving problems where the intent of the rule may have been unclear; (2) eliminating or simplifying unnecessary or repetitive language; (3) breaking long, complicated sections into shorter subsections; and (4) shortening sentences for readability.

This rule package does not: (1) make any substantive changes unless a provision clearly conflicted with statutory requirements (e.g., recordkeeping requirements in THSC, §401.057 and §401.058) or a change was needed to implement either HB 1172 or the BPR-PIT recommendations; (2) address whether rule requirements are Texas Department of Health (TDH) or TNRCC jurisdiction; (3) address new NRC compatibility issues, beyond the definition of low-level radioactive waste; or (4) make any changes affecting the regulation of naturally occurring radioactive material (NORM) waste disposal.

The adopted version of the rules has been approved by the Texas Radiation Advisory Board (TRAB).

## SECTION BY SECTION DISCUSSION

### Subchapter A - General Provisions

Section §336.1 was amended to change the reference to the United States Nuclear Regulatory Commission to the acronym "NRC" throughout the section. Section 336.1(a) was amended to simplify the reference to Chapter 336 and to break part of it out into paragraphs (1) and (5) so that new paragraphs (2) - (4) could be added to clarify the meaning of the rule. Section 336.1(a)(2) language was moved, unchanged from §336.5(c), to spell out exemptions to the agency's rules and the agency's jurisdiction early in the subchapter, except the §336.5(c) catchline, "United States Department of Energy contractors and United States Nuclear Regulatory Commission contractors" was deleted. Section 336.1(a)(3) provides clarification that radioactive material transferred outside of the possession of the federal government is subject to state jurisdiction. Section 336.1(a)(4) provides clarification that transportation issues are outside the TNRCC's jurisdiction, but that a transporter is still subject to applicable requirements of other government agencies. Section 336.1(a)(5) was moved, unchanged, from the last sentence in existing §336.1(a). Section 336.1(b) was amended to refer interested parties to the agency for a copy of the Articles of Agreement between the NRC and the State of Texas, rather than to a specific internal organization that might change in a future agency reorganization. A correction to the title of the Articles of Agreement in §336.1(b) was made from proposal to adoption, in which "United States Atomic Energy Commission" was corrected to refer to the "United States Nuclear Regulatory Commission" because the agreement is now with the NRC. Also a change was made from proposal to adoption to correct the acronym for United States Nuclear Regulatory Commission from "USNRC" to "NRC" in two places. Section 336.1(d) was amended to clarify that persons licensed under the "chapter," rather than the "subchapter," are required to confine "disposal," as well as "possession and use," of licensed radioactive material to the locations and purposes authorized under the license. Section 336.1(f) merges, clarifies, and restates in plain English, prohibitions regarding radioactive material waste disposal, derived from repealed §336.334 and from repealed §336.501(a) and (b), regarding the requirement for a license to dispose of low-level radioactive material or waste on-site; from repealed §336.332(e), regarding receiving low-level radioactive waste from other persons; and from repealed §336.501(a) and §336.332(a), regarding NORM waste disposal. A minor correction to §336.1(f)(3) was made from proposal to adoption which hyphenated "radium 226" and "radium

228" for consistency with other rule citations. Section 336.1(g) provides clarification that accelerator-produced radioactive material, though not a low-level radioactive waste by definition, is regulated in the same manner as low-level radioactive waste. This provision maintains the status quo regarding the regulation of accelerator-produced radioactive material, yet does not conflict with the new definition of low-level radioactive waste mandated by HB 1172 or with the definition of low-level radioactive waste of the NRC.

The §336.2 definition of "Agreement state" was amended from proposal to adoption to correct the acronym for the "United States Nuclear Regulatory Commission" from "USNRC" to "NRC." The definition of "Byproduct material" was amended to insert "or" in place of "and" to maintain compatibility with the federal definition and Senate Bill (SB) 1857, 74th Legislature, 1997. The definition of "Disposal" was added as a new definition to implement HB 1172's amendments to THSC, §401.003(8). Definitions were subsequently renumbered throughout this section to account for definition additions and deletions. The definition of "Generally applicable environmental radiation standards" was amended to abbreviate "United States Environmental Protection Agency" as "EPA." The definition of "Land disposal facility" was amended to add "Low-level" in front of "radioactive waste" to conform with HB 1172. The definition of "Low-level radioactive waste" was amended to conform with HB 1172's new THSC, §401.004 and the definition of "Waste" in Title 10 Code of Federal Regulations (CFR) §61.2. However, at the request of the Texas Radiation Advisory Board (TRAB), a chapter specific definition of "transuranic waste" was added in §336.2(107) and a reference was included in §336.2(57)(B)(iii) to exclude transuranic waste from the definition of low-level radioactive waste. Subparagraph (c) was derived from HB 1172. The TRAB members requested this change to eliminate potential confusion between low-level radioactive waste and high-level radioactive waste. The definition of "Major amendment" was deleted to provide consistency between the permitting programs in the agency, as recommended by the agency's BPR-PIT, and as discussed in amendments to §305.62(c) in a concurrent rule-making in this issue of the *Texas Register*. The radiation control program will now use the agency's definition of major amendment in §305.62(c)(1). The definition of "Minor amendment" was also deleted to provide consistency in agency applications processing, as recommended by the agency's BPR-PIT, which was discussed in the preamble to §305.62(c)(2). The radiation control program will use the agency's definition of minor amendment in §305.62(c)(2). The rule moves the definition of "On-site" without change from §336.502(3) because it applies to more than one subchapter. The definition of "Radioactive substance" was amended to conform with THSC, §401.003(19). The definition of "Radioactive waste" was deleted because it was replaced with the new HB 1172 definition of "Low-level radioactive waste." For the purpose of this chapter, a new definition of "Transuranic waste," based upon the waste classification system in 10 CFR §61.55 and §336.362, was added to provide a definition for this term that was referenced in the definition of "Low-level radioactive waste." Transuranic waste is specific to waste with radionuclide concentration levels that exceed the Class C low-level radioactive waste classification threshold. Waste with transuranic radionuclide concentrations at or below the 100 nanocurie/gm level would fall into the category of either byproduct material under §336.2(13)(A), or accelerator-produced radioactive material under §336.2(2).

Section 336.5(a) was amended to delete the subtitle "General provision" and to make its language conform with HB 1172 amendments to THSC, §401.106(b) and (c). However, a minor change was made from proposal to adoption. In §336.5(a), the first sentence, "shall" was changed to "may" to agree with the statutory language in THSC §401.106(b). Section 336.5(a)(1) - (4) were new provisions added providing more detail on the processing of requests for exemption from rule and on the information required to be submitted with the request.

A commission order authorizing or denying a request for an exemption from the application of a rule would be the authorization or denial for that activity. In some cases, the commission order may also specify the requirement to obtain or maintain a license. Since HB 1172 did not authorize the TNRCC to exempt persons from statutory requirements, requests for exemption from the requirement to get a license will not be entertained. Because the process of 30 TAC Chapter 90 will be used, the public participation requirements contained in Chapter 90 will be followed.

New §336.5(b) is adopted to conform with HB 1172's new THSC, §401.104(e) to exempt from licensing requirements, persons participating in the agency's Voluntary Cleanup Program or Superfund cleanups. Former §336.5(b) was deleted because radioactive material transportation is not within the agency's jurisdiction, and therefore is not an exemption. The deleted language was simplified and moved to §336.1(a)(4). New §336.5(c) clearly delineates that radioactive materials exempted from licensing requirements by TDH under THSC, §401.106(a) are not subject to regulation as radioactive materials by the TNRCC. Former §336.5(c) was deleted and moved to §336.1(a)(2) because it pertains to activities outside of the agency's jurisdiction rather than an exemption from rule.

#### Subchapter B - Radioactive Substance Fees

Section 336.103 was amended to add "low-level" to "radioactive waste" wherever it appears in subsections (a) - (c) to conform with HB 1172.

Section 336.105 was amended to be consistent with the non-substantive organizational changes made throughout Subchapters F and G to improve readability. Existing fee amounts remain unchanged. The section title was amended to "Schedule of Fees for Other Licenses." Section 336.105(a) was amended to delete the catchline "Application fee" and add "or Subchapter G of this title (relating to Decommissioning Standards)"; §336.105(a)(1) was amended to delete "facility at which active disposal operations have ceased" and replace that language with "facilities regulated under Subchapter G"; and §336.5(a)(2) was amended to delete "proposed facility with active disposal operations" and replace that language with "facilities regulated under Subchapter F of this chapter." Section 336.105(b) was amended to delete the catchline "Annual license fees," and add "and Subchapter G;" §336.105(b)(1) was amended to delete "licensed facility at which active disposal operations have ceased" and replace that language with "facilities regulated under Subchapter G of this chapter;" and §336.105(b)(2) was amended to delete "licensed facility with active disposal operations" and replace that language with "facilities regulated under Subchapter F of this chapter." Section 336.105(c) was amended to delete the catchline "fees for certain amendment requests," add "a major" in front of "amendment," add "or Subchapter G," and delete "if the amendment involves expansion of previously authorized disposal facilities or addition of disposal facilities" to make the fee applicable to all major amendments under Subchapter F or G. Section 336.105(d) clarifies what fees apply when a facility ceases disposal activities and

has received approval of the final decommissioning plan since a decommissioning plan is approved as a license amendment and the decommissioning will be carried out under the amended license.

Section 336.107(a) was amended to correct a cross-reference and reflect the newly adopted section title for §336.105.

#### Subchapter C - Additional Application, Operation, and License Requirements

This subchapter is repealed entirely and its requirements moved to new, more appropriate locations or completely repealed if those requirements are addressed elsewhere in the agency rules. The first sentence in §336.201(a) was moved to §336.205. The requirement that application information be complete and accurate in §336.201(a) was repealed because it is redundant with language in §305.44(b). Section 336.201(b) - (d) language was moved to §305.54 with minor modifications such as adding the words "low-level" and taking out obsolete dates. Repealed §336.203 language was moved to §281.21(f) with minor modifications. Repealed §336.205 and §336.338 language was moved to §336.331 with minor modifications. Repealed §336.207 language was moved in part to §336.332. Repealed §336.209 language was moved to and merged with §336.341 with the exception of §336.209(d) (which was moved to §336.339) and §336.209(f) (which is being repealed) to clarify that these recordkeeping requirements are applicable to all licensees. Section 336.210 is repealed because THSC, §401.392, which is the basis for it, was repealed in 1997. Repealed §336.211 language was moved to §336.335 with additional language from §336.351. Repealed §336.213 language was moved to §336.336 with modifications. Section 336.215 is repealed, along with §336.742, because both provisions were redundant with §305.125(10). Repealed §336.219 language was moved to §305.125(22) and amended to apply to all programs as discussed in the concurrent Chapter 305 adoption in this issue of the *Texas Register*.

#### New Subchapter C - General Disposal Requirements

This new subchapter is adopted to provide a central location for all of the general radioactive material disposal requirements and to clarify existing radioactive material disposal requirements. This new subchapter is based on existing disposal requirements in THSC, Chapter 401 and 30 TAC Chapter 336.

New §336.201 states that the new subchapter pertains to the disposal of all radioactive materials, except byproduct material that is under TDH jurisdiction (§336.2(13)(B)) and oil and gas NORM waste.

Section 336.203 sets forth the statutory requirement that all radioactive material disposal must be authorized by either a TNRCC license (THSC, §401.101) or an exemption by the TDH (THSC, §401.106(a)).

New §336.205(a) states that applications are to be submitted under the requirements of Chapter 305 (which also refers to the applicable subchapters under Chapter 336). Section 336.205(b) states that applications are to be accompanied by the appropriate fee from Subchapter B.

Section 336.207 consolidates requirements from repealed §336.504(1) - (4), and applies to all radioactive material licensing actions. Section 336.504(5) is repealed because it is redundant with §305.127(4)(C) requirements.

Section 336.209 language was moved from repealed §336.505 and amended to include compliance with Texas statutes and the agency rules relating to radioactive material licensing, as a precondition for license issuance. This adopted change is part of the agency effort to make the radioactive material licensing process consistent with the administrative procedures of other permitting programs of the agency.

Section 336.211 clarifies general requirements for radioactive material disposal. Section 336.211(a) contains language which was moved essentially unchanged from deleted §336.331(a), except to correct cross-references and to modify paragraph (3). Section 336.211(a)(3) is modified to clarify that once a radioactive material has decayed in storage, it shall be disposed of as authorized by other applicable laws, such as the Solid Waste Disposal Act. Adopted new subsection (b), relating to receipt of licensed materials from other persons, is based on 10 CFR §20.2001(b), and addresses a federal Level C compatibility category requirement. For NRC regulations that are assigned a Level C compatibility category, Agreement States are required to adopt the essential objectives of the NRC's program elements in rule but do not have to have a rule requirement identical to the federal regulation. Subsection (c) contains language which was moved from former §336.331(b) and clarified to reflect the TDH's jurisdiction. Subsection (d) is a clarification of regulatory jurisdiction over the disposal of radioactive materials. Subsection (e) is necessary to conform with HB 1172's new THSC, §401.106(c), and states that on-site disposal of low-level radioactive waste is prohibited in Texas, except that the commission may authorize the continued on-site disposal of low-level radioactive waste at facilities which began low-level radioactive waste disposal operations before September 1, 1989. Subsection (e) also clarifies that persons authorized to continue on-site disposal activities are to be licensed under Subchapter F. One minor change to §336.211(e) was made from proposal to adoption; in the second sentence, "shall" was changed to "may" to agree with the statutory language in THSC §401.106(c). Subsection (f) is a clarification from §336.701(a).

Section 336.213 is adopted as a clarification and major rewrite of former §336.332, which was based upon 10 CFR §20.2002. The section refers persons applying for a license to Chapter 305 for requirements regarding the application process. Within Chapter 336, there are three subchapters under which a license may be issued. Decommissioning licenses may be issued under Subchapter G, low-level radioactive waste disposal licenses may be issued under Subchapter H, and other on-site radioactive material disposal licenses for activities not licensed under Subchapter G or H will be issued under Subchapter F. Section 336.213(a) language was moved from former §336.332(c) and has been rewritten to clarify that these license applications will be submitted and processed under Chapter 305. Section 336.213(b) language was moved from former §336.332(b) and has been rewritten to clarify that changes to radioactive material license conditions are to be submitted and processed according to the amendment process in Chapter 305, Subchapter D. Section 336.213(c) language was moved from repealed §336.332(a) and (d) and has been rewritten to clarify the purpose of Subchapter F (relating to Licensing of Alternative Methods of Disposal of Radioactive Materials). Repealed §336.332(a) addressed activities not clearly regulated elsewhere in the rules. Sections 336.501 and 336.213(c) now serve this function. Subchapter F is intended to be used in instances where an applicant applies for authorization for on-site disposal not covered by any other Chapter 336

subchapter. Subchapter F is not intended to be used to authorize activities regulated under Subchapter G or H or to authorize disposal of radioactive material received from other persons.

Section 336.215 contains language moved unchanged from repealed §336.333, except for minor style and format changes.

Section 336.217 addresses the same requirements as repealed §336.334, and has been amended as necessary to correct cross-references, reflect the reorganization of Chapter 336, and to implement the new requirements of HB 1172 relating to exemptions.

Section 336.219 contains those provisions moved from repealed §336.335 and amended to reference Subchapter F rather than repealed §336.332 because of reorganization under adopted §336.213.

Section 336.221 contains language moved from §336.336, with modifications for readability and correction of cross-references.

Section 336.223 is a clarification of the relationship between the radiation control and underground injection control (UIC) programs, based upon the following existing rules and statutes. Title 40 CFR §144.11 prohibits any underground injection unless authorized under the UIC program. Section 331.7(a) of this title requires that all injection wells and activities be authorized by permit. Adopted §336.203, based on THSC, §401.101 and §401.106(a), requires that all disposal of radioactive material be licensed by the TNRCC or exempted by the TDH. Thus, adopted §336.223 requires disposal of "radioactive material by injection" to be authorized under both the UIC and radiation control rules.

Section 336.225 contains language moved from repealed §336.337, which has been modified to correct cross-references, correct a typographical error in repealed §336.337(c) by changing an incorrect reference from subsection (b) to (d), change "may" to "shall" in subsection (d) to make clear that the requirements are mandatory, and delete general license language originally in repealed §336.337(f) because it is not within the agency's jurisdiction. It also changes "executive director" to "agency" in subsection (d) for consistency with rules in other programs.

Section 336.229 is a clarification of existing TNRCC policy. Once a waste is classified as a radioactive material, whether low-level radioactive waste, NORM waste, or byproduct material, it maintains that classification for the purposes of determining the appropriate means of disposal under Chapter 336.

#### Subchapter D - Standards for Protection Against Radiation

The changes to Subchapter D are primarily organizational in nature. The disposal requirements in this subchapter were moved to the new Subchapter C - General Disposal Requirements. Transfer, transportation, and reporting and testing requirements from Subchapter C were moved to Subchapter D to be merged with similar requirements, or eliminated if redundant.

Section 336.301(a) was amended to add "and establishes minimum standards for all persons who dispose of radioactive materials" to clarify that some provisions within the subchapter apply to all persons and not just licensees. New §336.301(d) contains language moved unchanged from repealed §336.340, which stated that compliance with the rules in Chapter 336 does not preclude a licensee from having to comply with other federal, state, and local regulations.

Section 336.308 was amended to correct a cross-reference in §336.308(d) to reflect the new adopted section for incident reporting requirements and to change the numeral "7" to "seven."

Section 336.313(a)(1) was amended to correct a cross-reference to reflect the new adopted section for disposal into sanitary sewerage requirements. Section 336.313 also includes usage changes such as changing the numeral "1" to "one," and using "EPA" rather than spelling out "United States Environmental Protection Agency."

Former §336.331 is repealed as discussed in relation to §336.211. The adopted new §336.331 contains language moved from repealed §336.205 with grammatical changes. The language moved from §305.205(b)(4) was edited to remove redundant language by deleting "to any person otherwise authorized to receive this material by the Federal government or any agency thereof, the commission, the TDH, or any Agreement State; or." In §336.331(b)(1), the words "executive director" have been changed to "agency" to reflect the authority of the agency to receive transferred radioactive material. Also, "may" has been changed to "shall" to make it clear that such transfers should occur only after agency approval. Subsections (g) and (h) consist of language moved from repealed §336.338, as amended to remove obsolete manifest requirements in repealed §336.338(b)(2).

Former §336.332 is repealed as discussed in relation to adopted new §336.213. The adopted new §336.332 is moved from repealed §336.207 with grammatical changes.

Section 336.333 is repealed and its language moved to §336.215 with grammatical changes.

Section 336.334 was repealed and its language moved to §336.217, as discussed in relation to §336.217.

Former §336.335 is repealed. The adopted new §336.335 moves incident reporting requirements from former §336.211 and §336.351, merges the incident reporting requirements for ease of use, and amends the existing language as needed to clarify the requirements and to conform with the federal requirements in 10 CFR §20.2202, §30.50, §40.60, Part 40 Appendix A, and Part 61. New §336.335 clarifies that notifications in any form should be submitted to the executive director which by definition, includes staff. As such, the redundant reference to "or staff" was deleted in §336.335(a), (b), and (c)(1) and (2). The following minor typographical corrections were made from proposal to adoption. In §336.335(a), inside the parenthetical entry at the end of the first sentence, "shall" was changed to "may" to conform with the language in 10 CFR §30.50; and in the last sentence, the second "shall" was changed to "may" to agree with language in repealed §336.351(a). In §336.335(b), the second "shall" was changed to "may" to agree with language in repealed §336.351(b); and in §336.335(c)(2), the second sentence, "shall" was changed to "may" to agree with language in repealed §336.211(3)(B).

Former §336.336 is repealed as discussed in relation to §336.221. Language for new adopted §336.336 was moved substantially unchanged from repealed §336.213.

Section 336.337 is repealed as discussed in relation to adopted §336.225.

Former §336.338 is repealed as discussed in relation to adopted new §336.331. Adopted new §336.338 contains language moved from repealed §336.348 and amended to conform to THSC, §401.057 by eliminating a time limit for record

retention, by substituting the term "person" for "licensee," and adding language from §401.057(c) and (d).

Former §336.339 is repealed, and the language was moved with modifications to adopted new §336.701(e) because repealed §336.339 applied to low-level radioactive waste. Adopted new §336.339 contains language from former §336.349 and §336.209(d).

Section 336.340 is repealed as discussed in relation to adopted §336.301.

The §336.341 title was amended to "General Recordkeeping Requirements for Licensees" to centrally locate general recordkeeping requirements for licensees (as opposed to general recordkeeping requirements for all disposal of sources of radiation in new §336.338). Section 336.341(b) was amended to update the cross-reference from §336.338 to §336.331(h). The language in adopted new §336.341(d) - (g) was moved from repealed §336.209(a) - (c) and (e), respectively. A typographical correction was made from proposal to adoption. In §336.341(d), the second sentence, the second "shall" was changed to "may" to agree with language from former §336.209(a).

Section 336.348 is repealed as discussed in relation to adopted §336.338.

Section 336.349 is repealed as discussed in relation to adopted §336.339.

Section 336.351 is repealed as discussed in relation to adopted §336.335.

Section 336.352(a) and paragraph (1) were amended to correct cross-references from §336.351 to §336.335 to reflect the reorganization amendments of this chapter.

Section 336.355(a) was amended to add "low-level" in front of "radioactive waste" to conform with HB 1172.

Section 336.361 is repealed to delete an obsolete manifesting provision which applied only to low-level radioactive waste received from other persons for disposal at a licensed land disposal facility before March 1, 1998. Because there was no land disposal facility licensed to receive waste from others in Texas before March 1, 1998, the requirement was obsolete and was deleted.

Subchapter E: Notices, Instructions, and Reports to Workers and Inspections

Section 336.405(d) was amended to correct a cross-reference to reflect the chapter reorganization.

Subchapter F: Licensing of Alternative Methods of Disposal of Radioactive Material

The rules adopt a new regulatory scheme that requires decommissioning of a site to be considered a separate and distinct action from the act of obtaining a license to dispose of radioactive material. When Subchapter F was originally adopted, owners of facilities with radioactive material contaminated soils and buildings and/or old radioactive material landfills were considered to be in "possession" of radioactive material. After NRC promulgated its "Timeliness in Decommissioning Rules (59 Fed Reg 36026), published July 15, 1994, effective August 15, 1994," and "Radiological Criteria for License Termination, (62 Fed Reg 39058) published July 21, 1995, effective August 20, 1997," it was no longer appropriate to license contaminated areas as "possessing" radioactive material for extended periods

of time without decommissioning. A new concept of timely decommissioning, followed by release for unrestricted or restricted use, had to be implemented in conformance with the new NRC requirements.

The following sections relating to decommissioning requirements in Subchapter F are repealed and moved to Subchapter G: §§336.502 - 336.505, 336.512, 336.514, 336.515, 336.517, 336.519, and 336.521. These decommissioning provisions were moved substantially unchanged to Subchapter G to consolidate all decommissioning requirements in one subchapter. This separates by chapter the decommissioning of inactive sites from the disposal of radioactive material at active sites. The remaining requirements in Subchapter F were modified to more closely reflect the NRC's methods of licensing (10 CFR §20.2002) and were clarified and put into plain English.

No substantive changes were made other than to comply with federal and state laws and regulations. This federal regulation provides a mechanism to consider requests for approval of on-site disposal activities that do not fit the licensing criteria in Subchapter H or G. As amended and subject to applicable limitations, the commission may continue to consider requests for on-site disposal of radioactive materials which are not addressed by Subchapters G and H under Subchapter F (e.g., diffuse NORM waste having concentrations of radium-226 or radium-228 of less than 2,000 pCi/g).

The receipt and disposal of radioactive materials from off-site (other persons/commercial disposal) is not intended to be authorized by Subchapter F. This represents no change from current agency practice.

In conformance with HB 1172, 76th Legislature, 1999 under Subchapter F, the commission may also consider requests for on-site disposal of low-level radioactive waste on a specific basis at any facility at which low-level radioactive waste disposal operations began before September 1, 1989.

Section 336.501 is repealed and replaced with new provisions to reflect organizational changes discussed previously where requirements for active disposal of radioactive material and for the decommissioning of inactive facilities were separated between Subchapters F and G. Adopted new §336.501(a) states that Subchapter F applies only to on-site disposal of radioactive material generated in the person's activities, and thus, may not be used to authorize commercial disposal of radioactive material or disposal of radioactive material received from other persons. Language from repealed §336.501(a) was added in part to §336.601(a) to move the decommissioning requirements for inactive disposal sites to Subchapter G; and to §336.615. A minor typographical correction was made from proposal to adoption. In adopted new §336.501(a) "shall" was changed to "may" to agree with language formerly in repealed §336.501(a). Adopted new §336.501(b) conforms with HB 1172's new definition of low-level radioactive waste and new THSC, §401.106(c). A minor change to new §336.501(b) was made from proposal to adoption; in the second sentence, "shall" was changed to "may" to agree with the statutory language in THSC, §401.106(c). The language in repealed §336.501(c) was moved unchanged to §336.615. The language in repealed §336.501(d) was deleted to eliminate duplicative language. NRC requires all contaminated facilities, including those previously authorized or closed, to meet the new decommissioning standards for unrestricted or restricted release. Before NRC promulgated its timeliness-in-decommissioning regulations and new decommissioning standards, facilities which had contamination or waste

disposed of on their property were licensed for possession of the radioactive material. The NRC's timeliness-in-decommissioning regulations changed that by requiring facilities to be decommissioned within a specific time frame upon cessation of activities. The preamble for the NRC's decommissioning standard also stated that the new standard was to be applied retroactively to all sites that exceeded the standard for release for unrestricted use. Therefore, sites previously authorized by the TNRC or TDH are subject to current decommissioning standards. Section 336.501(e) was moved to new §336.501(c) and amended to remove "or waste" because the definition of "Radioactive material" includes "Low-level radioactive waste."

Former §336.502 is repealed because §336.502(1) and (2) relate to decommissioning standards and §336.502(3) applies to all of Chapter 336 and not just Subchapter F. Section 336.502(1) and (2) were moved to adopted §336.602, and §336.502(3) was moved to adopted §336.2.

Former §336.503 is repealed, and its language moved with changes to adopted §336.205 as part of the reorganization of the chapter. These changes require that applicants use the application process in Chapters 281 and 305.

Former §336.504 is repealed, and its language moved to adopted §336.207 as part of the reorganization of the chapter. These changes require that applicants use the application process in Chapters 281 and 305.

Former §336.505 is repealed, and its language moved to adopted §336.209, as part of the reorganization of the chapter. These changes require that applicants use the application process in Chapters 281 and 305.

Section 336.512 is repealed, and its language moved with minor modifications (e.g., eliminate redundant requirements, renumber accordingly, correct cross-references, and adjust one catchline) to adopted §336.617.

Section 336.513(a) was amended to add information required by Chapter 305 and to refer applicants to Chapter 305 for the information required to be submitted for a license to authorize radioactive material disposal. Section 336.513(a)(1) was deleted because it was redundant with §305.45. Subsequent paragraphs were renumbered to account for paragraph deletions. Former §336.513(a)(6) was deleted because it is redundant with §305.45(a)(6). Section 336.513(a)(19) was amended to correct a cross-reference. Section 336.513(b)(1)(H) was also amended to correct a cross-reference.

Former §336.514 is repealed with the language moved unchanged except to correct cross-references to adopted §336.619.

Former §336.515 is repealed as discussed in relation to adopted §336.621.

Former §336.517 is repealed as discussed in relation to adopted §336.623.

Former §336.519 is repealed as discussed in relation to adopted §336.625.

Former §336.521 is repealed with its language moved unchanged to adopted §336.627.

#### Subchapter G: Decommissioning Standards

Section 336.601(a) was amended to add "the inactive disposal sites regulated under this subchapter" to confirm that the decommissioning of inactive sites previously addressed in Subchapter

F is now addressed in this subchapter and to add "low-level" in front of "radioactive waste" in two locations to conform with HB 1172. Section 336.601(b) was amended to add, "This subchapter also establishes the criteria under which a facility may be licensed for decommissioning" in place of deleted "Licensees who have submitted a decommissioning plan to the commission and have received commission approval of the plan before the effective date of these criteria may decommission according to the regulations in place at the time of filing of the plan or according to these criteria" to indicate that this subchapter establishes the criteria under which a facility may be "licensed" to be decommissioned.

New §336.602 was added to this subchapter. The definitions of "Control and maintenance" and "Institutional control" were taken from NRC's draft regulatory guidance DG-4006, "Demonstrating Compliance With the Radiological Criteria for License Termination," dated August 1998, and are terms which are also used in Subchapter G and the programs' financial assurance requirements. The definition of "Inactive disposal site" was moved from repealed §336.502 with modifications to eliminate redundancies. The definition of "Funding plan" was moved from repealed §336.502 because it applies to decommissioning provisions.

Section 336.607(3) was amended to reflect the adopted new titles for Chapter 37, Subchapters S and T.

Section 336.613(a) was amended to add "do not apply to licenses issued under Subchapter H of this chapter (relating to Licensing Requirements for Near-surface Land Disposal of Low-Level Radioactive Waste)" in place of deleted "(apply only to licenses issued under Subchapter F of this chapter (relating to Licensing of Alternative Methods of Disposal of Radioactive Material))" to clarify that the section requirements apply to all licenses, except for those issued under Subchapter H. Because of the reorganization of this chapter, §336.613(b) was amended to correct two cross-references and §336.613(c) was amended to correct a cross-reference. A minor typographical correction to §336.613(c) was made from proposal to adoption in which "shall" was corrected to "may" to agree with the original language in §336.613(c).

Section 336.615 is a new section adopted with its language moved unchanged from the last sentence of repealed §336.501(a) and from repealed §336.501(c).

Section 336.617 is a new section adopted with its language moved from repealed §336.512 unchanged, except to eliminate redundant requirements and to make minor formatting changes (e.g., deletions of catchlines and changing a reference from Subchapter G to "of this chapter"). From proposal to adoption, the catchlines from repealed §336.512 were added back to this section's subsections for proper *Texas Register* formatting and greater clarity. The adopted new language does not include former §336.512(a)(1) and instead requires the applicant to submit information as provided in Chapter 305. New §336.617(a)(7), (b)(1), and (g) includes updated cross-references due to the adopted reorganization of this chapter.

Section 336.619 is a new section adopted with its language moved from repealed §336.514 unchanged, except for cross-references.

Section 336.621 is a new section adopted with its language moved from repealed §336.515 unchanged, except for cross-references and to amend the language moved to §336.621(3)(D) to be consistent with NRC's decommissioning standards. Some

minor typographical corrections were made from proposal to adoption. In §336.621(1), the second sentence, "shall" was changed to "may" in two places to agree with original language in repealed §336.515(1). Also in §336.621(2), "shall" was changed to "may" to agree with original language in repealed §336.515(2).

Section 336.623 is a new section adopted with its language moved unchanged from repealed §336.517 except for an updated cross-reference in §336.623(a).

Section 336.625 is a new section adopted with its language moved from repealed §336.519 unchanged, except for cross-references, clarification of language, and elimination of redundancies. Minor typographical corrections have been made from proposal to adoption. In §336.625(f), in the last line, "with" was corrected to "within." In §336.625(g)(2) and (4), and (h), in the last sentence, "shall" was changed to "may" to agree with original language in repealed §336.519(g)(2) and (4) and (h).

Section 336.627 is a new section adopted with its language moved unchanged from repealed §336.521, except for an introductory sentence that this table is to be used for calculating financial assurance for decommissioning.

Subchapter H: Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste

The adopted changes to this subchapter are primarily to reflect the new term "low-level radioactive waste" and to make other conforming changes required by HB 1172. Other changes include clarification of language, correction of citations, elimination of redundancies, and changes to maintain compatibility with the NRC rules.

The title of Subchapter H was amended to add "Low-Level" in front of "Radioactive Waste" to incorporate the new HB 1172 term "low-level radioactive waste."

Throughout §336.701, "low-level" was inserted in front of "radioactive waste" to conform to HB 1172. Section 336.701(a) was amended to add "and accelerator-produced radioactive material" in three places. To indicate that accelerator-produced radioactive material continues to be regulated to the same standards as low-level radioactive waste, the commission amended §336.701(a) to add the following sentence: "For the purpose of this subchapter, the term 'low-level radioactive waste' includes accelerator-produced radioactive material." Section 336.701(b)(2) was amended to correct a cross-reference and to delete "except as provided in subsection (c) of this section" which conforms to changes elsewhere in this adoption. Section 336.701(b)(3) was deleted to conform with the new definition of low-level radioactive waste in HB 1172 and the waste classification and characteristic requirements in §336.362 and 10 CFR §61.55. Note that for purposes of this chapter, low-level radioactive waste does not include transuranic waste as defined in §336.2(107). The remaining paragraphs were renumbered accordingly. Section 336.701(b)(4) was amended to include the title of the referenced §336.362. Section 336.701(c) was deleted because the TNRCC no longer has jurisdiction over byproduct material as defined in §336.2(13)(B). The subsequent subsections were relettered. Newly renumbered §336.701(c) was amended to correct the title of Subchapter C, as adopted. A further clarification to §336.701(c) was made from proposal to adoption. A sentence was added to clarify that Chapter 336, Subchapter G only applies to ancillary surface facilities at a Subchapter H licensed facility. This clarification conforms with Chapter 336, Subchapter G, §336.601(a). Section

336.701(d) was amended to clarify that facilities authorized under §336.501(b) are to be licensed under Subchapter F and are not subject to Subchapter H. Section 336.701(e) contains language, with some change, moved from repealed §336.339.

Section 336.702 was amended to delete the former paragraph (6) definition of "Disposal" to conform with the HB 1172 definition of "Disposal," which is located in adopted §336.2(27), and the remaining paragraphs were renumbered accordingly. Because of HB 1172 changes, the renumbered paragraph (21) replaces the former definition of "Waste" with a reference to the definition of low-level radioactive waste in §336.2.

Section 336.705 was amended to add "Chapter 305 of this title (relating to Consolidated Permits)" as part of the effort to make the radiation control program's application process consistent with that of the other permitting programs of the agency.

Section 336.718(b) was amended to add "Chapter 305 of this title (relating to Consolidated Permits)" to indicate that license renewal applications must also be filed in accordance with Chapter 305 to make the radiation control program's application process consistent with that of the other permitting programs of the agency.

Section 336.742 is repealed because it is duplicative of language in §305.125(10) (relating to Inspections), which under these adopted rules will apply to Subchapter H.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments to Chapter 336 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because there are no significant requirements added to radioactive material disposal facilities. The amendments are either required by state or federal laws, or are part of agency efforts to streamline its permitting process. (Also see discussion in adopted amendments to Chapter 305 in this issue of the *Texas Register*.)

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rules is to: (1) implement HB 1172, 76th Legislature, 1999, and its amendments to the THSC; (2) implement the recommendations of the TNRCC's BPR-PIT to provide for consistency between the procedures of the radiation control program and the other permitting programs of the agency; and (3) improve readability and understanding by reorganizing Chapter 336, putting its requirements into plain English and eliminating redundancies and conflicts. The rules will substantially advance these specific purposes by incorporating these changes to implement HB 1172: (1) amending the definition of low-level radioactive waste to be compatible with the NRC's definition; (2)

incorporating the TNRCC's new authority to exempt from application of a rule; (3) adding an exemption to continue or expand on-site low-level radioactive waste disposal licensed before September 9, 1989; and (4) adding exemptions from radioactive material licensing requirements for facilities participating in the Voluntary Cleanup Program or Superfund cleanups. In addition, the rules implement recommendations of the BPR-PIT by using the agency's definitions for major and minor amendments rather than radiation control program specific definitions; by moving the application process from Chapter 336 to Chapter 281 and Chapter 305 and amending it to be consistent with other agency application procedures; by making Chapter 336 more understandable by partially reorganizing the chapter; and by clarifying wording, eliminating unnecessary or repetitive language, and improving readability. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because there are no significant requirements added to radioactive material disposal facilities. The amendments are either required by state or federal laws, or are part of agency efforts to streamline its permitting process.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the adopted rulemaking and found that the rules are neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adoption is not subject to the CMP.

#### HEARING AND COMMENTERS

A public hearing on the proposed amendments was held on July 6, 2000; however, no public comment was received. Two commenters, Envirocare of Texas, Inc. (Envirocare), and TXU Business Services on behalf of TXU Generation (TXU) submitted written comments on the proposed rules during the public comment period which closed on July 17, 2000.

#### ANALYSIS OF TESTIMONY

Envirocare commented that §336.1(a)(2)(D) of the proposed rule allows the State of Texas and the NRC to declare a Department of Energy contractor or subcontractor to be exempt from state regulation. It further commented that the rule should be amended to be clear that this determination would be subject to public notice and the opportunity for a hearing.

Section 336.1 establishes the scope of the chapter. The §336.1(a)(2)(D) exemption is mandated by federal statute rather than a discretionary exemption granted by the commission. The proposed language already existed in §336.5(c)(4), which was intended to only apply to exemptions within the commission's regulatory jurisdiction. Therefore, this federal exemption was moved from the commission's exemptions section to the section defining the scope of the chapter. Because this federal exemption is outside the jurisdiction of the TNRCC, this agency cannot create a rule requirement regarding public comment and a hearing on federal prime contractors and subcontractors as suggested by the commenter. The commission has made no change in response to the comments.

TXU commented that it strongly supports the TNRCC's language to modify the definition of low-level radioactive waste to conform to the federal definition.

The commission appreciates the statement of support.

TXU also requested that the TDH exclusion of fossil fuel combustion byproducts in 25 TAC §289.259(d) be specifically cited within §336.5 and §336.203. The commenter proposed that the reference to "Texas Health and Safety Code Section 401.106(a)" be replaced with a specific reference to "25 TAC §289.259(d)."

The requested change would limit the provision recognizing TDH exemptions by rule to just one specific exemption in the TDH radiation control rules. The commission's proposed rule language covers all TDH radioactive material exemptions by rule. The commission's proposed rule language provides more flexibility than the language proposed by the commenter. The commission prefers to cite the statutory authority for the TDH exemptions, THSC, §401.106(a), rather than numerous specific TDH rule citations because it minimizes the need for future TNRCC rulemaking if the TDH modifies its rules. The commission has made no change in response to the comments.

Envirocare commented that §336.211(a)(3) suggests that decay in storage is a disposal option subject to the licensing requirements of the TNRCC. It further commented that some long-term storage options that are subject to the jurisdiction of the TDH also result in some wastes decaying during the storage period and that §336.211 should be clarified to make sure that long-term storage is not inadvertently classified as "disposal."

The commission would like to clarify that the issue of long-term storage as a radioactive material management technique is not addressed in the current rulemaking. As part of its Agreement State obligations, the commission must maintain a regulatory program and rules that are compatible with those of the federal NRC. This language in §336.211(a)(3) is derived from NRC's equivalent requirement regarding decay in storage in 10 CFR §20.2001(a)(2). The language in §336.211(a)(3) is being moved essentially unchanged from repealed §336.331(a)(3), except for the additional non-substantive language regarding legal authority to conduct the activity. The commission's proposed language is intended to clarify that, even though radioactive material has decayed in storage below TDH exemption levels, it is still subject to the other applicable laws relating to disposal, such as the Solid Waste Disposal Act.

The issue of long-term storage options for low-level radioactive waste and other radioactive material is currently being studied as part of a legislative directive for the TNRCC to investigate techniques for managing low-level radioactive waste including, but not limited to, aboveground isolation facilities. Therefore, the commission believes that it would be premature to address this issue at this time.

## SUBCHAPTER A. GENERAL PROVISIONS

### 30 TAC §§336.1, 336.2, 336.5

#### STATUTORY AUTHORITY

The amendments are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

#### §336.1. *Scope and General Provisions.*

(a) Except as otherwise specifically provided, the rules in this chapter apply to all persons who dispose of radioactive substances, except byproduct material defined by §336.2(13)(B) of this title (relating to Definitions).

(1) However, nothing in these rules shall apply to any person to the extent that person is subject to regulation by the United States Nuclear Regulatory Commission (NRC) or to radioactive material in the possession of federal agencies.

(2) Any United States Department of Energy contractor or subcontractor or any NRC contractor or subcontractor of the following categories operating within the state, is exempt from the rules in this chapter, with the exception of any applicable fee set forth in Subchapter B of this chapter, to the extent that such contractor or subcontractor under his contract receives, possesses, uses, transfers, or acquires sources of radiation:

(A) prime contractors performing work for the United States Department of Energy at a United States government-owned or controlled site, including the transportation of radioactive material to or from the site and the performance of contract services during temporary interruptions of transportation;

(B) prime contractors of the United States Department of Energy performing research in or development, manufacture, storage, testing, or transportation of atomic weapons or components thereof;

(C) prime contractors of the United States Department of Energy using or operating nuclear reactors or other nuclear devices in a United States government-owned vehicle or vessel; and

(D) any other prime contractor or subcontractor of the United States Department of Energy or the NRC when the state and the NRC jointly determine that:

(i) the exemption of the prime contractor or subcontractor is authorized by law; and

(ii) under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety or the environment.

(3) Radioactive material that is physically received from the federal government by a non-federal facility is subject to state jurisdiction except as provided in paragraph (2) of this subsection.

(4) The rules of this chapter do not apply to transportation of radioactive materials. This provision does not exempt a transporter from other applicable requirements.

(5) The rules in this chapter do not apply to the disposal of radiation machines as defined in this subchapter or electronic devices which produce non-ionizing radiation.

(b) Regulation by the State of Texas of source material, byproduct material, and special nuclear material in quantities not sufficient to form a critical mass is subject to the provisions of the agreement between the State of Texas and the NRC and to Part 150 of Title 10 Code of Federal Regulations (10 CFR Part 150) (Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274). (A copy of the Texas agreement, "Articles of Agreement between the United States Nuclear Regulatory Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended" (Agreement), may be obtained from this agency.) Under the Agreement and 10 CFR Part 150, the NRC retains certain regulatory authorities over source material, byproduct material, and special nuclear material in the State of Texas. Persons in the State of Texas are not exempt from the regulatory requirements of the NRC with respect to these retained authorities.

(c) No person may receive, possess, use, transfer, or dispose of radioactive material, which is subject to the rules in this chapter, in such a manner that the standards for protection against radiation prescribed in these rules are exceeded.

(d) Each person licensed by the commission under this chapter shall confine possession, use, and disposal of licensed radioactive material to the locations and purposes authorized in the license.

(e) No person may cause or allow the release of radioactive material, which is subject to the rules in this chapter, to the environment in violation of this chapter or of any rule, license, or order of the Texas Natural Resource Conservation Commission (commission).

(f) No person shall:

(1) dispose of low-level radioactive waste on site, (except as authorized under §336.501(b) of this title (relating to Scope and General Provisions));

(2) receive low-level radioactive waste from other persons for the purpose of disposal, except for a public entity specifically licensed for the disposal of low-level radioactive waste; or

(3) dispose of radioactive materials other than low-level radioactive waste, except for diffuse naturally occurring radioactive material waste having concentrations of less than 2000 pCi/g radium-226 or radium-228.

(g) For the purpose of this chapter, any time the term "low-level radioactive waste" is used, the provision also applies to accelerator-produced radioactive material.

#### §336.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, or as described in Chapter 3 of this title (relating to Definitions), unless the context clearly indicates otherwise. Additional definitions used only in a certain subchapter will be found in that subchapter.

(1) Absorbed dose - The energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the rad and the gray (Gy).

(2) Accelerator-produced radioactive material - Any material made radioactive by exposing it to the radiation from a particle accelerator.

(3) Activity - The rate of disintegration (transformation) or decay of radioactive material. The units of activity are the curie (Ci) and the becquerel (Bq).

(4) Adult - An individual 18 or more years of age.

(5) Agreement state - Any state with which the United States Nuclear Regulatory Commission (NRC) or the Atomic Energy Commission has entered into an effective agreement under the Atomic Energy Act of 1954, §274b, as amended through October 24, 1992 (Public Law 102-486).

(6) Airborne radioactive material - Any radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

(7) Airborne radioactivity area - A room, enclosure, or area in which airborne radioactive materials, composed wholly or partly of licensed material, exist in concentrations:

(A) in excess of the derived air concentrations (DACs) specified in §336.359, Appendix B, Table I, Column 1, of this title

(relating to Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage); or

(B) to a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6% of the ALI or 12 DAC-hours.

(8) Annual limit on intake (ALI) - The derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the "reference man" that would result in a committed effective dose equivalent of 5 rems (0.05 sievert) or a committed dose equivalent of 50 rems (0.5 sievert) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table I, Columns 1 and 2, of §336.359, Appendix B, of this title.

(9) As low as is reasonably achievable (ALARA) - Making every reasonable effort to maintain exposures to radiation as far below the dose limits in this chapter as is practical, consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of ionizing radiation and licensed radioactive materials in the public interest.

(10) Background radiation - Radiation from cosmic sources; non-technologically enhanced naturally-occurring radioactive material, including radon (except as a decay product of source or special nuclear material) and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include radiation from radioactive materials regulated by the commission, Texas Department of Health, NRC, or an Agreement State.

(11) Becquerel (Bq) - See §336.4 of this title (relating to Units of Radioactivity).

(12) Bioassay - The determination of kinds, quantities, or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body. For purposes of the rules in this chapter, "radiobioassay" is an equivalent term.

(13) Byproduct material -

(A) A radioactive material, other than special nuclear material, that is produced in or made radioactive by exposure to radiation incident to the process of producing or using special nuclear material; or

(B) The tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes, and other tailings having similar radiological characteristics. Underground ore bodies depleted by these solution extraction processes do not constitute "byproduct material" within this definition.

(14) CFR - Code of Federal Regulations.

(15) Class - A classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of

clearance half-times: for Class D (Days) of less than ten days, for Class W (Weeks) from 10 to 100 days, and for Class Y (Years) of greater than 100 days. For purposes of the rules in this chapter, "lung class" and "inhalation class" are equivalent terms.

(16) **Collective dose** - The sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(17) **Committed dose equivalent ( $H_{T,m}$ ) (CDE)** - The dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

(18) **Committed effective dose equivalent ( $H_{E,m}$ ) (CEDE)** - The sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues.

(19) **Critical group** - The group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

(20) **Curie (Ci)** - See §336.4 of this title.

(21) **Declared pregnant woman** - A woman who has voluntarily informed her employer, in writing, of her pregnancy and the estimated date of conception.

(22) **Decommission** - To remove (as a facility) safely from service and reduce residual radioactivity to a level that permits:

(A) release of the property for unrestricted use and termination of license; or

(B) release of the property under restricted conditions and termination of the license.

(23) **Deep-dose equivalent ( $H_d$ )** (which applies to external whole-body exposure) - The dose equivalent at a tissue depth of one centimeter (1,000 milligrams/square centimeter).

(24) **Depleted uranium** - The source material uranium in which the isotope uranium-235 is less than 0.711%, by weight, of the total uranium present. Depleted uranium does not include special nuclear material.

(25) **Derived air concentration (DAC)** - The concentration of a given radionuclide in air which, if breathed by the "reference man" for a working year of 2,000 hours under conditions of light work (inhalation rate of 1.2 cubic meters of air/hour), results in an intake of one ALI. DAC values are given in Table I, Column 3, of §336.359, Appendix B, of this title.

(26) **Derived air concentration-hour (DAC-hour)** - The product of the concentration of radioactive material in air (expressed as a fraction or multiple of the derived air concentration for each radionuclide) and the time of exposure to that radionuclide, in hours. A licensee shall take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of five rems (0.05 sievert).

(27) **Disposal** - With regard to low-level radioactive waste, the isolation or removal of low-level radioactive waste from mankind and mankind's environment without intent to retrieve that low-level radioactive waste later.

(28) **Distinguishable from background** - The detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

(29) **Dose** - A generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of the rules in this chapter, "radiation dose" is an equivalent term.

(30) **Dose equivalent ( $H_T$ )** - The product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the rem and sievert (Sv).

(31) **Dose limits** - The permissible upper bounds of radiation doses established in accordance with the rules in this chapter. For purposes of the rules in this chapter, "limits" is an equivalent term.

(32) **Dosimetry processor** - An individual or organization that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

(33) **Effective dose equivalent ( $H_E$ )** - The sum of the products of the dose equivalent to each organ or tissue ( $H_T$ ) and the weighting factor ( $w_T$ ) applicable to each of the body organs or tissues that are irradiated.

(34) **Embryo/fetus** - The developing human organism from conception until the time of birth.

(35) **Entrance or access point** - Any opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed radioactive materials. This includes portals of sufficient size to permit human access, irrespective of their intended use.

(36) **Exposure** - Being exposed to ionizing radiation or to radioactive material.

(37) **Exposure rate** - The exposure per unit of time.

(38) **External dose** - That portion of the dose equivalent received from any source of radiation outside the body.

(39) **Extremity** - Hand, elbow, arm below the elbow, foot, knee, and leg below the knee. The arm above the elbow and the leg above the knee are considered part of the whole body.

(40) **Eye dose equivalent** - The external dose equivalent to the lens of the eye at a tissue depth of 0.3 centimeter (300 milligrams/square centimeter).

(41) **General license** - An authorization granted by an agency under its rules which is effective without the filing of an application with that agency or the issuance of a licensing document to the particular person.

(42) **Generally applicable environmental radiation standards** - Standards issued by the EPA under the authority of the Atomic Energy Act of 1954, as amended through October 4, 1996, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(43) **Gray (Gy)** - See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(44) **High radiation area** - An area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 millisievert) in one hour at 30 centimeters from any source of radiation or from any surface that the radiation penetrates.

(45) **Individual** - Any human being.

- (46) Individual monitoring - The assessment of:
- (A) dose equivalent by the use of individual monitoring devices; or
  - (B) committed effective dose equivalent by bioassay or by determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours; or
  - (C) dose equivalent by the use of survey data.

(47) Individual monitoring devices - Devices designed to be worn by a single individual for the assessment of dose equivalent. For purposes of the rules in this chapter, "individual monitoring equipment," "personnel dosimeter," and "dosimeter" are equivalent terms. Examples of individual monitoring devices are film badges, thermoluminescent dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.

(48) Inhalation class - See "Class."

(49) Inspection - An official examination and/or observation including, but not limited to, records, tests, surveys, and monitoring to determine compliance with the Texas Radiation Control Act (TRCA) and rules, orders, and license conditions of the commission.

(50) Internal dose - That portion of the dose equivalent received from radioactive material taken into the body.

(51) Land disposal facility - The land, buildings and structures, and equipment which are intended to be used for the disposal of low-level radioactive wastes into the subsurface of the land. For purposes of this chapter, a "geologic repository" as defined in 10 CFR §60.2 as amended through October 27, 1988 (53 FedReg 43421) (relating to Definitions - high-level radioactive wastes in geologic repositories) is not considered a "land disposal facility."

(52) License - See "Specific license."

(53) Licensed material - Radioactive material received, possessed, used, processed, transferred, or disposed of under a license issued by the commission.

(54) Licensee - Any person who holds a license issued by the commission in accordance with the TRCA and the rules in this chapter. For purposes of the rules in this chapter, "radioactive material licensee" is an equivalent term. Unless stated otherwise, "licensee" as used in the rules of this chapter means the holder of a "specific license."

(55) Licensing state - Any state with rules equivalent to the Suggested State Regulations for Control of Radiation relating to, and having an effective program for, the regulatory control of naturally occurring or accelerator-produced radioactive material (NARM) and which has been designated as such by the Conference of Radiation Control Program Directors, Inc.

(56) Lost or missing licensed radioactive material - Licensed material whose location is unknown. This definition includes material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

(57) Low-level radioactive waste -

(A) Except as provided by subparagraph (B) of this paragraph, low-level radioactive waste means radioactive material that:

(i) is discarded or unwanted and is not exempt by a Texas Department of Health rule adopted under the Texas Health and Safety Code, §401.106;

(ii) is waste, as that term is defined by 10 CFR §61.2; and

(iii) is subject to:

- (I) concentration limits established under this chapter; and
- (II) disposal criteria established under this chapter.

(B) Low-level radioactive waste does not include:

(i) high-level radioactive waste defined by 10 CFR §60.2;

(ii) spent nuclear fuel as defined by 10 CFR §72.3;

(iii) transuranic waste as defined by paragraph (107) of this section;

(iv) byproduct material as defined by paragraph (13)(B) of this section;

(v) naturally occurring radioactive material (NORM) waste; or

(vi) oil and gas NORM waste.

(C) When used in this section, the references to 10 CFR sections mean those CFR sections as they existed on September 1, 1999, as required by Texas Health and Safety Code, §401.005.

(58) Lung class - See "Class."

(59) Member of the public - Any individual except when that individual is receiving an occupational dose.

(60) Minor - An individual less than 18 years of age.

(61) Monitoring - The measurement of radiation levels, radioactive material concentrations, surface area activities, or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of the rules in this chapter, "radiation monitoring" and "radiation protection monitoring" are equivalent terms.

(62) Naturally occurring or accelerator-produced radioactive material (NARM) - Any naturally occurring or accelerator-produced radioactive material except source material or special nuclear material.

(63) Naturally occurring radioactive material (NORM) waste - Solid, liquid, or gaseous material or combination of materials, excluding source material, special nuclear material, and byproduct material, that:

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

(B) is discarded or unwanted; and

(C) is not exempt under rules of the Texas Department of Health adopted under Texas Health and Safety Code, §401.106.

(64) Near-surface disposal facility - A land disposal facility in which low-level radioactive waste is disposed of in or within the upper 30 meters of the earth's surface.

(65) Nonstochastic effect - A health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of the rules in this chapter, "deterministic effect" is an equivalent term.

(66) Occupational dose - The dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation and/or to radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee or other person. Occupational dose does not include dose received from background radiation, as a patient from medical practices, from voluntary participation in medical research programs, or as a member of the public.

(67) Oil and gas naturally occurring radioactive material (NORM) waste - Naturally occurring radioactive material (NORM) waste that constitutes, is contained in, or has contaminated oil and gas waste as that term is defined in the Texas Natural Resources Code, §91.1011.

(68) On-site - The same or geographically contiguous property that may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way that the property owner controls and to which the public does not have access, is also considered on-site property.

(69) Personnel monitoring equipment - See "Individual monitoring devices."

(70) Planned special exposure - An infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

(71) Principal activities - Activities authorized by the license which are essential to achieving the purpose(s) for which the license is issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

(72) Public dose - The dose received by a member of the public from exposure to radiation and/or radioactive material released by a licensee, or to any other source of radiation under the control of the licensee. It does not include occupational dose or doses received from background radiation, as a patient from medical practices, or from voluntary participation in medical research programs.

(73) Quality factor (Q) - The modifying factor listed in Table I or II of §336.3 of this title that is used to derive dose equivalent from absorbed dose.

(74) Quarter (Calendar quarter) - A period of time equal to one-fourth of the year observed by the licensee (approximately 13 consecutive weeks), providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(75) Rad - See §336.3 of this title.

(76) Radiation - Alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions. For purposes of the rules in this chapter, "ionizing radiation" is an equivalent term. Radiation, as used in this chapter, does not include non-ionizing radiation, such as radio- or microwaves or visible, infrared, or ultraviolet light.

(77) Radiation and Perpetual Care Fund - A fund established in the treasury of the State of Texas for the purposes set forth in the TRCA, §401.305.

(78) Radiation area - Any area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.005 rem (0.05 millisievert) in one hour at 30

centimeters from the source of radiation or from any surface that the radiation penetrates.

(79) Radiation machine - Any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

(80) Radioactive material - A naturally-occurring or artificially-produced solid, liquid, or gas that emits radiation spontaneously.

(81) Radioactive substance - Includes byproduct material, radioactive material, low-level radioactive waste, source material, special nuclear material, source of radiation, and NORM waste, excluding oil and gas NORM waste.

(82) Radioactivity - The disintegration of unstable atomic nuclei with the emission of radiation.

(83) Radiobioassay - See "Bioassay."

(84) Reference man - A hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics shall be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base. A description of "reference man" is contained in the International Commission on Radiological Protection report, ICRP Publication 23, "Report of the Task Group on Reference Man."

(85) Rem - See §336.3 of this title.

(86) Residual radioactivity - Radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of 10 CFR Part 20.

(87) Respiratory protection equipment - An apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials. For purposes of the rules in this chapter, "respiratory protective device" is an equivalent term.

(88) Restricted area - An area, access to which is limited by the licensee for the purpose of protecting individuals against undue risks from exposure to radiation and radioactive materials. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building shall be set apart as a restricted area.

(89) Roentgen (R) - See §336.3 of this title.

(90) Sanitary sewerage - A system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee.

(91) Sealed source - Radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions that are likely to be encountered in normal use and handling.

(92) Shallow-dose equivalent (H<sub>s</sub>) (which applies to the external exposure of the skin or an extremity) - The dose equivalent at a tissue depth of 0.007 centimeter (seven milligrams/square centimeter) averaged over an area of one square centimeter.

(93) SI - The abbreviation for the International System of Units.

(94) Sievert (Sv) - See §336.3 of this title.

- (95) Site boundary - That line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee.
- (96) Source material -
- (A) Uranium or thorium, or any combination thereof, in any physical or chemical form; or
- (B) ores that contain, by weight, 0.05% or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material.
- (97) Special form radioactive material - Radioactive material which is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule and which has at least one dimension not less than five millimeters and which satisfies the test requirements of 10 CFR 71.75 as amended through September 28, 1995 (60 FedReg 50264) (Transportation of License Material).
- (98) Special nuclear material -
- (A) Plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the NRC, under the provisions of the Atomic Energy Act of 1954, §51, as amended through November 2, 1994 (Public Law 103-437), determines to be special nuclear material, but does not include source material; or
- (B) any material artificially enriched by any of the foregoing, but does not include source material.
- (99) Special nuclear material in quantities not sufficient to form a critical mass - Uranium enriched in the isotope 235 in quantities not exceeding 350 grams of contained uranium-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of these in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed 1. For example, the following quantities in combination would not exceed the limitation: (175 grams contained U-235/350 grams) + (50 grams U-233/200 grams) + (50 grams Pu/200 grams) = 1.
- (100) Specific license - A licensing document issued by an agency upon an application filed under its rules. For purposes of the rules in this chapter, "radioactive material license" is an equivalent term. Unless stated otherwise, "license" as used in this chapter means a "specific license."
- (101) State - The State of Texas.
- (102) Stochastic effect - A health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of the rules in this chapter, "probabilistic effect" is an equivalent term.
- (103) Survey - An evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, and/or presence of radioactive materials or other sources of radiation. When appropriate, this evaluation includes, but is not limited to, physical examination of the location of radioactive material and measurements or calculations of levels of radiation or concentrations or quantities of radioactive material present.
- (104) Termination - As applied to a license, a release by the commission of the obligations and authorizations of the licensee under the terms of the license. It does not relieve a person of duties and responsibilities imposed by law.
- (105) Total effective dose equivalent (TEDE) - The sum of the deep-dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.
- (106) Total organ dose equivalent (TODE) - The sum of the deep-dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in §336.346(a)(6) of this title (relating to Records of Individual Monitoring Results).
- (107) Transuranic waste - For the purposes of this chapter, wastes containing alpha emitting transuranic radionuclides with a half-life greater than five years at concentrations greater than 100 nanocuries/gram.
- (108) Type A quantity (for packaging) - A quantity of radioactive material, the aggregate radioactivity of which does not exceed  $A_1$  for special form radioactive material or  $A_2$  for normal form radioactive material, where  $A_1$  and  $A_2$  are given in or shall be determined by procedures in Appendix A to 10 CFR Part 71 as amended through September 28, 1995 (60 FedReg 50264) (Packaging and Transportation of Radioactive Material).
- (109) Type B quantity (for packaging) - A quantity of radioactive material greater than a Type A quantity.
- (110) Unrefined and unprocessed ore - Ore in its natural form before any processing, such as grinding, roasting, beneficiating, or refining.
- (111) Unrestricted area - Any area that is not a restricted area.
- (112) Very high radiation area - An area, accessible to individuals, in which radiation levels could result in an individual receiving an absorbed dose in excess of 500 rads (five grays) in one hour at one meter from a source of radiation or from any surface that the radiation penetrates. (At very high doses received at high dose rates, units of absorbed dose (rad and gray) are appropriate, rather than units of dose equivalent (rem and sievert).)
- (113) Violation - An infringement of any provision of the TRCA or of any rule, order, or license condition of the commission issued under the TRCA or this chapter.
- (114) Week - Seven consecutive days starting on Sunday.
- (115) Weighting factor ( $w_T$ ) for an organ or tissue (T) - The proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of  $w_T$  are:  
Figure: 30 TAC §336.2(115) (No change.)
- (116) Whole body - For purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.
- (117) Worker - An individual engaged in activities under a license issued by the commission and controlled by a licensee, but does not include the licensee.
- (118) Working level (WL) - Any combination of short-lived radon daughters in one liter of air that will result in the ultimate emission of  $1.3 \times 10^6$  million electron volts (MeV) of potential alpha particle energy. The short-lived radon daughters are: for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212.

(119) Working level month (WLM) - An exposure to one working level for 170 hours (2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month).

(120) Year - The period of time beginning in January used to determine compliance with the provisions of the rules in this chapter. The licensee shall change the starting date of the year used to determine compliance by the licensee provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

#### §336.5. Exemptions.

(a) The commission may exempt a source of radiation or a kind of use or user from the application of a rule in this chapter if it determines that the exemption is not prohibited by law and will not result in a significant risk to public health and safety or the environment. Persons requesting an exemption shall submit an application to the agency using the process in Chapter 90 of this title (relating to Regulatory Flexibility), including the submittal of any fees and which includes:

(1) the nature of the request;

(2) a legal analysis to demonstrate that the exemption is not prohibited by law;

(3) a technical analysis to demonstrate that the exemption will not result in a significant risk to public health and safety or the environment; and

(4) a detailed explanation, including a demonstration as appropriate, that the proposed exemption is:

(A) not prohibited by law, including any requirement for a federally approved or authorized program; and

(B) at least as protective of the environment and the public health as the method or standard prescribed by the commission rule that would otherwise apply.

(b) A person who is subject to an order issued under Texas Health and Safety Code, §361.188 or §361.272, for sites subject to Texas Health and Safety Code, Subchapter F, Chapter 361, or an agreement entered into under Texas Health and Safety Code, §361.606, is exempt from the requirement to obtain a license or other authorization from the commission. This provision does not exempt the person from complying with technical standards under this chapter. The exemption applies only to the assessment and remediation of the contamination at the site.

(c) Waste, that is exempted from licensing requirements by the Texas Department of Health under Texas Health and Safety Code, §401.106(a), is exempted from the requirements of this chapter.

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Margaret Hoffman

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## SUBCHAPTER B. RADIOACTIVE SUBSTANCE FEES

30 TAC §§336.103, 336.105, 336.107

### STATUTORY AUTHORITY

The amendments are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

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## SUBCHAPTER C. ADDITIONAL APPLICATION, OPERATION, AND LICENSE REQUIREMENTS

30 TAC §§336.201, 336.203, 336.205, 336.207, 336.209 - 336.211, 336.213, 336.215, 336.219

### STATUTORY AUTHORITY

The repeals are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

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## SUBCHAPTER C. GENERAL DISPOSAL REQUIREMENTS

30 TAC §§336.201, 336.203, 336.205, 336.207, 336.209, 336.211, 336.213, 336.215, 336.217, 336.219, 336.221, 336.223, 336.225, 336.229

## STATUTORY AUTHORITY

The new sections are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

### §336.211. *General Requirements for Radioactive Material Disposal.*

(a) Unless otherwise exempted, a licensee shall dispose of licensed material, as appropriate to the type of licensed material, only:

(1) by transfer to an authorized recipient as provided in §336.331(g) and (h) of this title (relating to Transfer of Radioactive Material) or in Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste);

(2) by transfer to a recipient authorized in another state by license issued by the United States Nuclear Regulatory Commission or an Agreement State or to the United States Department of Energy;

(3) by decay in storage as authorized by law;

(4) by release in effluents within the limits specified in §336.313 of this title (relating to Dose Limits for Individual Members of the Public);

(5) as authorized under §336.213 of this title (relating to Method of Obtaining Approval of Proposed Disposal Procedures);

(6) as authorized under §336.215 of this title (relating to Disposal by Release into Sanitary Sewerage);

(7) as authorized under §336.225 of this title (relating to Disposal of Specific Wastes); or

(8) as specifically authorized by commission license issued under this chapter.

(b) A person must be specifically licensed to receive waste containing licensed material from other persons for:

(1) treatment prior to disposal;

(2) treatment by incineration;

(3) decay in storage; or

(4) disposal at a land disposal facility.

(c) The processing and storage of radioactive material is subject to applicable rules of the Texas Department of Health (TDH), except as provided in subsection (d) of this section.

(d) The receipt, storage, and/or processing of radioactive materials, except for byproduct material under the jurisdiction of the TDH and oil and gas naturally occurring radioactive material waste, received at a licensed commercial radioactive material disposal facility for the explicit purpose of disposal at that facility shall be regulated in accordance with 25 TAC §289.101(d)(1) (relating to Memorandum of Understanding Between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions).

(e) The on-site disposal of low-level radioactive waste is prohibited, except as provided by this section. The commission may, on request or its own initiative, authorize on-site disposal of low-level radioactive waste on a specific basis at any facility at which licensed low-level radioactive waste disposal operations began before September 1, 1989, if, after evaluation of the specific characteristics of the waste, the disposal site, and the method of disposal, the commission

finds that the continuation of the disposal activity will not constitute a significant risk to public health and safety and to the environment. Persons subject to this subsection shall be licensed under Subchapter F of this chapter (relating to Licensing of Alternative Methods of Disposal of Radioactive Material).

(f) The disposal of low-level radioactive waste received from other persons is prohibited, except by a public entity that is specifically licensed under Subchapter H of this chapter.

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## SUBCHAPTER D. STANDARDS FOR PROTECTION AGAINST RADIATION

30 TAC §§336.301, 336.308, 336.313, 336.331, 336.332, 336.335, 336.336, 336.338, 336.339, 336.341, 336.352, 336.355

## STATUTORY AUTHORITY

The amendments and new sections are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

### §336.335. *Reporting Requirements for Incidents.*

(a) Immediate notification. Each licensee shall notify the executive director as soon as possible, but not later than four hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radiation or radioactive materials that could exceed regulatory limits or releases of radioactive materials that could exceed limits (e.g., events may include fires, explosions, toxic gas releases, etc.). Notwithstanding any other requirements for notification, each licensee shall immediately report to the executive director each event involving licensed radioactive material possessed by the licensee that may have caused or threatens to cause any of the following conditions:

(1) an individual to receive:

(A) a total effective dose equivalent of 25 rems (0.25 sievert) or more;

(B) an eye dose equivalent of 75 rems (0.75 sievert) or more; or

(C) a shallow-dose equivalent to the skin or extremities or a total organ dose equivalent of 250 rads (2.5 grays) or more; or

(2) the release of radioactive material inside or outside of a restricted area so that, had an individual been present for 24 hours, the individual could have received an intake five times the annual limit

on intake (ALI). This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

(b) Twenty-four hour notification. Each licensee shall, within 24 hours of discovery of the event, report to the executive director any event involving loss of control of licensed material possessed by the licensee that may have caused, or threatens to cause, any of the following conditions:

(1) an individual to receive, in a period of 24 hours:

(A) total effective dose equivalent exceeding five rems (0.05 sievert);

(B) an eye dose equivalent exceeding 15 rems (0.15 sievert); or

(C) a shallow-dose equivalent to the skin or extremities or a total organ dose equivalent exceeding 50 rems (0.5 sievert); or

(2) the release of radioactive material inside or outside of a restricted area so that, had an individual been present for 24 hours, the individual could have received an intake in excess of one ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures; or

(3) an unplanned contamination event that:

(A) requires access to the contaminated area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;

(B) involves a quantity of material greater than five times the lowest annual limit on intake specified in §336.359 of this title (relating to Appendix B. Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage); and

(C) has access to the area restricted for a reason other than to allow isotopes with a half-life of less than 24 hours to decay prior to decontamination; or

(4) an event in which equipment is disabled or fails to function as designed when:

(A) the equipment is required by rule or license condition to prevent releases exceeding regulatory limits, to prevent exposures to radiation and radioactive materials exceeding regulatory limits, or to mitigate the consequences of an accident;

(B) the equipment is required to be available and operable when it is disabled or fails to function; and

(C) no redundant equipment is available and operable to perform the required safety function; or

(5) an event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body; or

(6) an unplanned fire or explosion damaging any radioactive material or any device, container, or equipment containing radioactive material when:

(A) the quantity of material involved is greater than five times the lowest annual limit on intake specified in §336.359 of this title; and

(B) the damage affects the integrity of the radioactive material or its container.

(c) Preparation and submission of reports. Reports made by licensees in response to the requirements of this section must be made as follows.

(1) Telephone report. Licensees shall make reports required by subsections (a) and (b) of this section by telephone, accompanied by a facsimile, to the executive director. To the extent that the information is available at the time of notification, the information provided in these reports must include:

(A) the caller's name and telephone number;

(B) a description of the event, including date and time;

(C) the exact location of the event;

(D) the isotopes, quantities, and chemical and physical form of the radioactive material involved; and

(E) any personnel radiation exposure data available.

(2) Written report. Each licensee who makes a report required by subsections (a) and (b) of this section shall submit a written follow-up report to the executive director within 30 days of the initial report. Written reports prepared under other regulations may be submitted to fulfill this requirement if the reports contain all of the necessary information. These written reports must be sent to the executive director. The reports must include:

(A) a description of the event, including the probable cause and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned;

(B) the exact location of the event;

(C) the isotopes, quantities, and chemical and physical form of the radioactive material involved;

(D) date and time of the event;

(E) corrective actions taken or planned and the results of any evaluations or assessments; and

(F) the extent of exposure of individuals to radiation or to radioactive materials. The licensee shall prepare the report so that names of individuals are stated in a separate and detachable part of the report.

(d) Confirmation of notification. Licensees shall make the reports required by subsections (a) and (b) of this section by telephone and shall confirm the telephone report within 24 hours by telegram, mailgram, or facsimile.

(e) Exception to notification. The provisions of this section do not apply to doses that result from planned special exposures, provided those doses are within the limits for planned special exposures and are reported under §336.353 of this title (relating to Reports of Planned Special Exposures).

#### §336.341. General Recordkeeping Requirements for Licensees.

(a) Each licensee shall use the units curie, rad, and rem, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by this subchapter. Disintegrations per minute may be indicated on records of surveys performed to determine compliance with §336.605 of this title (relating to Surface Contamination Limits for Facilities, Equipment, and Materials) and §336.364, Appendix G, of this title (relating to Acceptable Surface Contamination Levels).

(b) Notwithstanding the requirements of subsection (a) of this section, information on shipment manifests for wastes received at a licensed land disposal facility, as required by §336.331(h) of this title

(relating to Transfer of Radioactive Material), shall be recorded in International System of Units (SI) units (becquerel, gray, and sievert) or in SI and units as specified in subsection (a) of this section.

(c) The licensee shall make a clear distinction among the quantities entered on the records required by this subchapter, such as total effective dose equivalent, shallow-dose equivalent, eye dose equivalent, deep-dose equivalent, and committed effective dose equivalent.

(d) Each licensee shall maintain records showing the receipt, transfer, and disposal of all source material, byproduct material, or other licensed radioactive material. Each licensee shall also maintain any records and make any reports as may be required by the conditions of the license, by the rules in this chapter, or by orders of the commission. Copies of any records or reports required by the license, rules, or orders shall be submitted to the executive director or commission on request. All records and reports required by the license, rules, or orders shall be complete and accurate.

(e) The licensee shall retain each record that is required by the rules in this chapter or by license conditions for the period specified by the appropriate rule or license condition. If a retention period is not otherwise specified, each record shall be maintained until the commission terminates each pertinent license requiring the record.

(f) If there is a conflict between the commission's rules, license condition, or other written approval or authorization from the executive director pertaining to the retention period for the same type of record, the longest retention period specified takes precedence.

(g) The executive director may require the licensee to provide the commission with copies of all records prior to termination of the license.

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30 TAC §§336.331 - 336.340, 336.348, 336.349, 336.351, 336.361

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SUBCHAPTER E. NOTICES, INSTRUCTIONS,  
AND REPORTS TO WORKERS AND  
INSPECTIONS

30 TAC §336.405

#### STATUTORY AUTHORITY

The amendment is adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

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SUBCHAPTER F. LICENSING OF  
ALTERNATIVE METHODS OF DISPOSAL OF  
RADIOACTIVE MATERIAL

30 TAC §§336.501 - 336.505, 336.512, 336.514, 336.515, 336.517, 336.519, 336.521

#### STATUTORY AUTHORITY

The repeals are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

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**30 TAC §336.501, §336.513**

**STATUTORY AUTHORITY**

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**§336.501. Scope and General Provisions.**

(a) This subchapter establishes alternative criteria, terms, and conditions under which the commission may issue, amend, or renew a license for on-site disposal of radioactive material generated in the person's activities, not otherwise specifically authorized in this chapter.

(b) Except as provided by this subsection, the commission shall not authorize new or additional facilities or the expansion of existing facilities for the on-site disposal of low-level radioactive waste, except to a public entity specifically authorized by law for low-level radioactive waste disposal. The commission may, on request or its own initiative, authorize, under this subchapter, on-site disposal of low-level radioactive waste on a specific basis at any facility at which low-level radioactive waste disposal operations began before September 1, 1989, if after evaluation of the specific characteristics of the waste, the disposal site, and the method of disposal, the commission finds that the continuation of the disposal activity will not constitute a significant risk to the public health and safety and to the environment.

(c) No person authorized to dispose of radioactive material under this subchapter shall receive radioactive material for the purpose of disposal from other persons, sources, other facilities owned or operated by the applicant or licensee, or any other off-site locations.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 25, 2000.

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Margaret Hoffman  
Director, Environmental Law Division  
Texas Natural Resource Conservation Commission  
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For further information, please call: (512) 239-0348

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**SUBCHAPTER G. DECOMMISSIONING  
STANDARDS**

**30 TAC §§336.601, 336.602, 336.607, 336.613, 336.615,  
336.617, 336.619, 336.621, 336.623, 336.625, 336.627**

**STATUTORY AUTHORITY**

The amendments and new sections are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

**§336.613. Additional Requirements.**

(a) The requirements of this section do not apply to licenses issued under Subchapter H of this chapter (relating to Licensing Requirements for Near-surface Land Disposal of Low-Level Radioactive Waste).

(b) A decommissioning plan shall be submitted with the license application required by §336.615 of this title relating to (Inactive Disposal Sites). Holders of licenses of inactive disposal sites shall submit a decommissioning plan with the renewal application. Holders of licenses of active disposal sites shall submit a decommissioning plan no later than the date specified in §336.625(e)(2) of this title (relating to Expiration and Termination of Licenses).

(c) The executive director may approve an alternate schedule for submittal of a decommissioning plan required under §336.625(e)(2) of this title if the executive director determines that:

(1) the alternative schedule is necessary for the effective conduct of decommissioning operations; and

(2) presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

(d) A licensee shall request a license amendment to amend a decommissioning plan if revised procedures could increase potential health and safety impacts to workers or to the public. Examples of procedures that require a license amendment include, but are not limited to:

(1) procedures that involve techniques not applied routinely during cleanup or maintenance operations;

(2) workers entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(3) procedures that could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(4) procedures that could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(e) Procedures with potential health and safety impacts, such as those listed in subsection (d) of this section, may not be carried out prior to approval by the commission of the decommissioning plan.

(f) The proposed decommissioning plan for the site or separate building or outdoor area shall include:

(1) a description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(2) a description of planned decommissioning activities;

(3) a description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(4) a description of the planned final radiation survey;

(5) an updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning;

(6) for decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, a justification for the delay based on the criteria in subsection (h) of this section; and

(7) a description of the quality assurance/quality control program.

(g) The proposed decommissioning plan may be approved by the commission by license amendment if the information demonstrates that the decommissioning will be completed as soon as practicable and that the health and safety of workers and the public will be protected.

(h) Except as provided in subsection (j) of this section, the licensee shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following the initiation of decommissioning.

(i) Except as provided in subsection (j) of this section, when decommissioning involves the entire site, the licensee shall request license termination as the final step in decommissioning, which shall be as soon as practicable but no later than 24 months following the initiation of decommissioning.

(j) The commission may approve by license amendment a request for an alternate schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the commission determines that the alternative is warranted by consideration of the following:

(1) whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(2) whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period;

(3) whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(4) whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(5) other site-specific factors which the commission may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, groundwater treatment activities, monitored natural groundwater restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(k) As the final steps in decommissioning, the licensee shall:

(1) certify the disposition of all licensed material, including accumulated wastes;

(2) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in some other commission approved manner. The licensee shall, as appropriate:

(A) report levels of gamma radiation in units of micro-roentgens (millisieverts) per hour at 1 meter from surfaces, and report levels of radioactivity (removable and fixed), including alpha and beta, in units of disintegrations per minute or microcuries (megabecquerels)

per 100 square centimeters for surfaces, microcuries (megabecquerels) per milliliter for water, and picocuries (becquerels) per gram for solids such as soils or concrete; and

(B) specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested; and

(3) submit a request for license termination, which includes, but is not limited to, the information required by paragraphs (1) and (2) of this subsection.

(l) The executive director may require the licensee to provide any other information necessary to demonstrate that the facilities and land are suitable for release.

#### §336.617. *Technical Requirements for Inactive Disposal Sites.*

(a) Content of license application. An applicant for a license to authorize possession of disposed radioactive material and subsequent decommissioning of an inactive disposal site shall submit the information required in Chapter 305 of this title (relating to Consolidated Permits), and the following, using the application form provided by the agency:

(1) information on the concentration and total activity of each radionuclide disposed of, packaging of the wastes, the characteristics of the disposal site (e.g., geological, hydrological, and topographical), as-built disposal trench or landfill construction, final cover construction, and depth of burial of wastes. This information shall be as complete and accurate as possible based on the full extent of information available to the applicant about the previous disposal activities;

(2) a description of any radiological monitoring performed at the site and the resulting data;

(3) the technical qualifications and identity of personnel responsible for radiation safety functions at the site;

(4) a description of the methods of restricting access to the site (e.g., fencing) and any permanent site markers;

(5) information on land ownership and any covenants on land use imposed by recorded title documents;

(6) a decommissioning plan that meets the standards in this subchapter including an evaluation of the alternative of disposing of the radioactive material at a licensed disposal facility;

(7) information regarding financial assurance for decommissioning as provided for in §336.619 of this title (relating to Financial Assurance for Decommissioning); and

(8) for license applications other than renewals, a description of how facility design and procedures for operation minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize, to the extent practicable, the generation of radioactive wastes.

(b) Content of application for renewal of license.

(1) An applicant for renewal of a license authorizing possession of disposed radioactive material in an inactive disposal site or to decommission an inactive disposal site shall submit information using the application form provided by the agency on:

(A) the current conditions of the site (e.g., site stability and any maintenance performed at the site);

(B) any radiological monitoring performed at the site by the licensee and the resulting data;

(C) the methods of restricting access to the site;

(D) any changes in or additions to the procedures or information contained in previous applications;

(E) the technical qualifications and identity of personnel responsible for radiation safety functions at the site;

(F) a decommissioning plan that meets the standards in this subchapter, if not previously submitted, including an evaluation of the alternative of disposing of the radioactive material at a licensed disposal facility; and

(G) financial assurance for decommissioning as provided for in §336.619 of this title.

(2) The executive director may request additional information, such as that required by subsection (a) of this section, if this information was not previously provided for the site or is not current.

(c) Performance objectives. The applicant's submittal shall include sufficient information to enable the executive director to assess the potential hazard to public health and safety and to determine whether the disposal site will have a significant impact on the environment. The executive director shall evaluate existing inactive disposal sites on a case-by-case basis and shall consider the following general criteria and performance objectives in making the evaluation.

(1) Radiation exposure and release of radioactive materials from a disposal site shall be maintained as low as is reasonably achievable. Reasonable assurance must be provided that the potential dose to an individual on or near the site will be within acceptable limits. The estimated committed effective dose equivalent resulting from a radiological assessment of a site will usually be the determining factor in the granting of authorization for a disposal site. If the projected dose to a member of the public exceeds 25 millirems per year, the executive director shall consider other factors in determining whether to grant authorization for the site, including, but not limited to, the use of institutional controls to restrict access for a specified period of time.

(2) The location and characteristics of a site shall be such as to preclude potential offsite migration or transport of radioactive materials or ready access to critical exposure pathways.

(3) The general topography of the disposal site shall be compatible with its use for waste burial. As an example, surface features shall direct surface water drainage away from the disposal site. Wastes must not be buried in locations which, once covered, would tend to collect surface water. The characteristics of the site shall minimize, to the extent practicable, the potential for erosion and contact of percolating or standing water with wastes.

(4) Water-bearing strata shall be a minimum of ten feet below the depth at which waste is buried.

(5) Waste shall be emplaced in a manner that minimizes the void spaces between packages and permits the void spaces to be filled.

(6) Void spaces between waste packages shall be filled with earth or other material to reduce future subsidence within the fill.

(7) Cover design shall minimize water infiltration to the extent practicable, direct percolating or surface water away from the disposed waste, and resist degradation by surface geologic processes and biotic activity.

(8) In general, a site authorized under this subchapter shall be located, designed, operated, and closed so that long-term isolation and custodial care for long-term stability would not be required beyond the time the licensee can reasonably be expected to occupy the site. If a site does not meet this objective, requirements for long-term care shall be evaluated.

(9) The location of a disposal site shall be compatible with the uses of surrounding environs (both the applicant's and adjacent properties).

#### §336.621. Recordkeeping for Decommissioning.

Each person licensed under this subchapter shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the commission. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information important to decommissioning consists of:

(1) records of spills or other unusual occurrences involving the spread of contamination in and around the disposal facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas, as in the case of possible seepage into porous materials such as concrete. These records must include any known information on identification of involved nuclides, quantities, forms, and concentrations;

(2) as-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are disposed of and of locations of possible inaccessible contamination (e.g., buried pipes) that may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations;

(3) except for areas containing only radioactive materials having half-lives of less than 65 days, a list contained in a single document and updated every two years of the following:

(A) all areas designated as restricted areas, as defined in §336.2 of this title (relating to Definitions), and all areas formerly designated as restricted areas under rules in effect before January 1, 1994;

(B) all areas outside of restricted areas that require documentation under paragraph (1) of this section;

(C) all areas outside of restricted areas where current and previous wastes have been buried as documented under §336.338 of this title (relating to General Recordkeeping Requirements for Disposal); and

(D) all areas outside of restricted areas which contain material such that, if the license expired, the licensee must be required to decontaminate the area to unrestricted release levels; and

(4) records of the cost estimate performed for the funding plan or of the amount certified for decommissioning, and records of the financial assurance mechanism used for assuring funds.

#### §336.625. Expiration and Termination of Licenses.

(a) Each license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal not less than 30 days before the expiration date stated in the existing license. If an application for renewal in proper form has been filed at least 30 days before the expiration date stated in the existing license, the existing license shall not expire until the application has been finally determined by the commission. For the purposes of this section, "proper form" shall mean that the application includes the information required by §336.617 of this title (relating to Technical Requirements for Inactive Disposal Sites) or §336.513 of this title (relating to Technical Requirements for Active Disposal Sites). The existing license expires at the end of the day on which the commission makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(b) Each license revoked by the commission expires at the end of the day on the date of the commission's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by commission order.

(c) Each license continues in effect, beyond the expiration date if necessary, with respect to possession of source material, byproduct material, or other radioactive material until the commission notifies the licensee in writing that the license is terminated. During this time, the licensee shall:

(1) limit actions involving source material, byproduct material, or other radioactive material to those related to decommissioning; and

(2) continue to control entry to restricted areas until they are suitable for release in accordance with commission requirements.

(d) Within 60 days of the occurrence of any of the following, each licensee of an active disposal site shall provide written notification to the executive director:

(1) the license has expired under subsection (a) or (b) of this section; or

(2) the licensee has decided to permanently cease principal activities at the entire site or in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for unrestricted release in accordance with commission requirements; or

(3) no principal activities under the license have been conducted for a period of 24 months; or

(4) no principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with commission requirements.

(e) The licensee of an active disposal site shall either:

(1) within 60 days of the occurrence for which notification is required by subsection (d) of this section, begin decommissioning its site or any separate building or outdoor area that contains residual radioactivity, according to an approved decommissioning plan, so that the building or outdoor area is suitable for release in accordance with commission requirements; or

(2) if no decommissioning plan has been submitted, submit a decommissioning plan to the executive director, including a signed statement adjusting the amount of financial assurance based upon the detailed cost estimate included in the decommissioning plan, within 12 months of the notification required by subsection (d) of this section and request an amendment of the license to incorporate the plan into the license; and

(3) begin decommissioning within 60 days of the approval of that plan by the commission.

(f) The licensee of an inactive disposal site licensed under §336.615 of this title (relating to Inactive Disposal Sites), shall provide notice of and begin decommissioning within 90 days of license renewal. The owner or operator of an unlicensed inactive disposal site must apply for a license to decommission the site and begin decommissioning within 90 days of license approval.

(g) All licensees shall follow a commission-approved closure plan for decontamination, decommissioning, restoration, and reclamation of buildings and the site.

(1) Coincident with the notification required by subsections (d) or (f) of this section, the licensee shall continue to maintain

in effect all decommissioning financial assurance until the license is terminated by the commission.

(2) The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established under §336.613(f)(5) of this title (relating to Additional Requirements).

(3) Any licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so on or before January 1, 1998.

(4) Following approval of the decommissioning plan, with the approval of the executive director, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site.

(h) The executive director may grant in writing a request to extend the time periods established in subsections (d), (e), or (f) of this section, or to delay or postpone the decommissioning process, if the executive director determines that this relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted in writing no later than 30 days before notification under subsection (d) or (f) of this section. The schedule for decommissioning set forth in subsection (e) or (f) of this section may not commence until the executive director has made a determination on the request.

(i) Licenses, including expired licenses, will be terminated by the commission by written notice to the licensee when the executive director determines that:

(1) source material, byproduct material, and other radioactive material has been properly disposed;

(2) reasonable effort has been made to eliminate residual radioactive contamination, if present;

(3) the site is suitable for release;

(A) a radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with commission requirements; or

(B) other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with commission requirements;

(4) the licensee has paid any outstanding fees required by Subchapter B of this chapter (relating to Radioactive Substance Fees) and has resolved any outstanding notice(s) of violation issued to the licensee; and

(5) the licensee has complied with all other applicable decommissioning criteria required by this subchapter.

(j) A licensee may request that a subsite or a portion of a licensed area be released for unrestricted use before full license termination as long as release of the area of concern will not adversely impact the remaining unaffected areas and will not be recontaminated by ongoing authorized activities. When the licensee is confident that the area of concern will be acceptable to the state for release for unrestricted use, a written request for release for unrestricted use and agency confirmation of close-out work performed must be submitted to the executive director. The request should include a comprehensive report, accompanied by survey and sample results which show contamination is less than the limits specified in §336.603 of this title (relating to Radiological Criteria for Unrestricted Use), and an explanation of how ongoing authorized activities will not adversely affect the area proposed to be released. Upon confirmation by the executive director that the area of

concern is indeed releasable for unrestricted use, the licensee may apply for a license amendment, if required.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Natural Resource Conservation Commission

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## SUBCHAPTER H. LICENSING REQUIREMENTS FOR NEAR-SURFACE LAND DISPOSAL OF LOW-LEVEL RADIOACTIVE WASTE

30 TAC §§336.701, 336.702, 336.705, 336.718

### STATUTORY AUTHORITY

The amendments are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.116, 401.201 - 401.203, 401.303, 401.412, 401.413, and 401.415; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103, which give the commission the authority to adopt rules necessary to carry out its responsibilities to regulate and license the disposal of radioactive substances.

#### §336.701. *Scope and General Provisions.*

(a) This subchapter establishes, for near-surface land disposal of low-level radioactive waste and accelerator-produced radioactive material, the procedures, criteria, and terms and conditions upon which the commission issues a license for the disposal of low-level radioactive wastes and accelerator-produced radioactive material received from other persons. The rules in this subchapter apply to disposal of low-level radioactive waste and accelerator-produced radioactive material as defined in §336.2 of this title (relating to Definitions). For the purpose of this subchapter, the term "low-level radioactive waste" includes accelerator-produced radioactive material. If there is a conflict between the rules of the commission and the rules of this subchapter, the rules of this subchapter shall prevail. No person shall engage in disposal of low-level radioactive waste received from other persons except as authorized in a specific license issued under this subchapter. A licensee under this subchapter shall conduct processing of low-level radioactive waste received for disposal at the licensed site, incidental to the disposal of that waste, in accordance with provisions of the commission license which authorizes the disposal.

(b) A licensee authorized to dispose of low-level radioactive waste under the rules in this subchapter shall not accept for disposal:

(1) high-level radioactive waste as defined in 10 Code of Federal Regulations (CFR) 60.2 as amended through October 27, 1988 (53 FedReg 43421) (Definitions - high-level radioactive wastes in geologic repositories);

(2) byproduct material as defined in §336.2(13)(B) of this title;

(3) spent or irradiated nuclear fuel; or

(4) waste that is not generally acceptable for near-surface disposal as specified in §336.362 of this title (relating to Appendix E. Classification and Characteristics of Low-Level Radioactive Waste).

(c) In addition to the requirements of this subchapter, all licensees, unless otherwise specified, are subject to the requirements of Subchapters A - E and G of this chapter (relating to General Provisions; Radioactive Substance Fees; General Disposal Requirements; Standards for Protection Against Radiation; Notices, Instructions, and Reports to Workers and Inspections; and Decommissioning Standards). For Subchapter H licensees, the decommissioning and license termination criteria in Subchapter G of this chapter applies only to the ancillary surface facilities.

(d) On-site disposal of low-level radioactive waste at any site authorized under §336.501(b) of this title (relating to Scope and General Provisions), is not subject to licensing under this subchapter.

(e) Shipment and transportation of low-level radioactive waste to a licensed land disposal facility in Texas is subject to applicable rules of the Texas Department of Health, United States Department of Transportation, and United States Nuclear Regulatory Commission. Each shipment of low-level radioactive waste to a licensed land disposal facility in Texas is subject to inspection by the Texas Department of Health before shipment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Natural Resource Conservation Commission

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30 TAC §336.742

### STATUTORY AUTHORITY

The repeal is adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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**HB 1172 Rulemaking  
Changes from Proposal to Adoption  
in Underline and Strikeout**

**Additions = underlined**

**Deletions = ~~struckout~~**

**Chapter 37, Financial Assurance, Subchapter T:**

**§37.9030. Applicability.**

This subchapter applies to owners or operators required to provide financial assurance under Chapter 336, Subchapter H of this title (relating to Licensing Requirements For Near-Surface Land Disposal of Low-Level Radioactive Waste) ~~and Chapter 336, Subchapter G of this title (relating to Decommissioning Standards)~~. This subchapter establishes requirements and mechanisms for demonstrating financial assurance for closure and post closure.

**§37.9035. Definitions.**

Definitions for terms that appear throughout this subchapter may be found ~~are defined~~ in Subchapter A of this chapter (relating to General Financial Assurance Requirements), §336.2 of this title (relating to Definitions), ~~§336.602 of this title (relating to Definitions)~~, and §336.702 of this title (relating to Definitions), except the following definitions shall apply for this subchapter.

**Chapter 39, Public Notice, Subchapter M:**

**§39.703. Notice of Completion of Technical Review.**

(b) For any other application for a minor amendment to a license issued under Chapter 336, Subchapter F of this title (relating to Alternative Methods of Disposal of Radioactive Material) or Subchapter G of this title (relating to Decommissioning Standards), notice shall be mailed under this subchapter. The deadline to file public comment, protests, or hearing requests is ten days after mailing.

**§39.707. Published Notice.**

(a) For applications under Chapter 336, Subchapter F of this title (relating to Alternative Methods of Disposal of Radioactive Material) or Subchapter G of this title (relating to Decommissioning Standards), when notice is required to be published under this subchapter, the applicant shall publish notice at least once in a newspaper of largest general circulation in the county in which the facility is located.

**§39.709. Notice of Contested Case Hearing on Application.**

(b) For applications under Chapter 336, Subchapter F of this title (relating to Alternative Methods of Disposal of Radioactive Material) or Subchapter G of this title (relating to Decommissioning Standards), notice shall be mailed no later than 30 days before the hearing. For applications under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for

Near-Surface Land Disposal of Low-Level Radioactive Waste), notice shall be mailed no later than 31 days before the hearing.

## **Chapter 50, Action on Applications and Other Authorizations**

### **§50.31. Purpose and Applicability.**

(b) This subchapter applies to any application that is declared administratively complete before September 1, 1999. Any application that is declared administratively complete on or after September 1, 1999 is subject to Subchapter G of this chapter (relating to Action by the Executive Director). Except as provided by subsection (c) of this section, this subchapter applies to:

(21) determination of the financial, managerial, and technical capacity qualifications of applicants for loans from the Texas Water Development Board, if requested by that agency; and

## **Chapter 281, Applications Processing, Subchapter A**

### **§281.23. Application Amendment.**

(1) The executive director shall determine whether the application amendment constitutes a major amendment as defined in ~~§336.2~~ §305.62 of this title (relating to Amendment Definitions) or constitutes a substantial technical change to the application. Substantial technical changes may include changes in proposed waste disposal methods, enlargement or relocation of proposed areas to be licensed, transfer of an application to another applicant, significant changes in proposed facilities or operations, or other changes which will require extensive technical review.

## **Chapter 305, Consolidated Permits, Subchapter A**

### **§305.1 Scope and Applicability.**

Code of Federal Regulations (~~CFR~~) and Clean Water Act (~~CWA~~) acronym corrections made in a few places.

## **Chapter 305, Consolidated Permits, Subchapter D**

### **§305.62. Amendment.**

(c) Types of amendments.

(1) A major amendment is an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit.

~~(A) In case of a license issued under Chapter 336 (relating to Radioactive Substance Rules), a major amendment may also include an amendment for which the executive director has prepared a written environmental analysis or has determined that an environmental analysis is required.~~

~~(B)~~ In case of a license issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste), a major amendment is one which:

~~(A)(i)~~ authorizes a change in the type or concentration limits of wastes to be received;

~~(B)(ii)~~ authorizes receipt of wastes from other states not authorized in the existing license;

~~(C)(iii)~~ authorizes a change in the operator of the facility;

~~(D)(iv)~~ authorizes closure and the final closure plan for the disposal site; ~~or~~

~~(E)(v)~~ transfers the license to the custodial agency; ~~or~~

(F) authorizes a change which has a significant effect on the human environment and for which the executive director has prepared a written environmental analysis or has determined that an environmental analysis is required.

#### **Chapter 305, Subchapter F**

##### **§305.125. Standard Permit Conditions.**

Conditions applicable to all permits issued under this chapter, and which shall be incorporated into each permit expressly or by reference to this chapter are: as follows.

#### **Chapter 336, Radioactive Substance Rules, Subchapter A**

##### **§336.1. Scope and General Provisions.**

(b) Regulation by the State of Texas of source material, byproduct material, and special nuclear material in quantities not sufficient to form a critical mass is subject to the provisions of the agreement between the State of Texas and the USNRC and to Part 150 of Title 10 Code of Federal Regulations (10 CFR Part 150) (Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274). (A copy of the Texas agreement, "Articles of Agreement between the United States Nuclear Regulatory Atomic Energy Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended" (Agreement), may be obtained from this agency.) Under the Agreement and 10 CFR Part 150, the USNRC retains certain regulatory authorities over source material, byproduct material, and special nuclear material in the State of Texas. Persons in the State of Texas are not exempt from the regulatory requirements of the USNRC with respect to these retained authorities.

(f) No person shall:

(3) dispose of radioactive materials other than low-level radioactive waste, except for diffuse naturally occurring radioactive material waste having concentrations of less than 2000 pCi/g radium-226 or radium-228.

#### **§336.2. Definitions**

(5) **Agreement state** - Any state with which the United States Nuclear Regulatory Commission (~~NRC~~) (~~USNRC~~) or the Atomic Energy Commission has entered into an effective agreement under the Atomic Energy Act of 1954, §274b, as amended through October 24, 1992 (Public Law 102-486).

#### **§336.5. Exemptions.**

(a) The commission ~~may~~ **shall** exempt a source of radiation or a kind of use or user from the application of a rule in this chapter if it determines that the exemption is not prohibited by law and will not result in a significant risk to public health and safety or the environment.....

### **Chapter 336, Radioactive Substance Rules, Subchapter C:**

#### **§336.211. General Requirements for Radioactive Material Disposal.**

(e) The on-site disposal of low-level radioactive waste is prohibited, except as provided by this section. The commission ~~may~~ **shall**, on request or its own initiative, authorize on-site disposal of low-level radioactive waste on a specific basis at any facility at which licensed low-level radioactive waste disposal operations began before September 1, 1989, if, after evaluation of the specific characteristics of the waste, the disposal site, and the method of disposal, the commission finds that the continuation of the disposal activity will not constitute a significant risk to public health and safety and to the environment. Persons subject to this subsection shall be licensed under Subchapter F of this chapter (relating to Licensing of Alternative Methods of Disposal of Radioactive Material).

### **Chapter 336, Radioactive Substance Rules, Subchapter D**

#### **§336.335. Reporting Requirements for Incidents.**

(a) Immediate notification. Each licensee shall notify the executive director as soon as possible, but not later than four hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radiation or radioactive materials that could exceed regulatory limits or releases of radioactive materials that could exceed limits (e.g., events ~~may~~ **shall** include fires, explosions, toxic gas releases, etc.). Notwithstanding any other requirements for notification, each licensee shall immediately report to the executive director each event involving licensed radioactive material possessed by the licensee that ~~may~~ **shall** have caused or threatens to cause any of the following conditions...

(b) Twenty-four hour notification. Each licensee shall, within 24 hours of discovery of the event, report to the executive director any event involving loss of control of licensed material possessed by the licensee that ~~may~~ **shall** have caused, or threatens to cause, any of the following conditions...

(c) Preparation and submission of reports. Reports made by licensees in response to the requirements of this section must be made as follows.

(2) Written report. Each licensee who makes a report required by subsections (a) and (b) of this section shall submit a written follow-up report to the executive director within 30 days of the initial report. Written reports prepared under other regulations may shall be submitted to fulfill this requirement if the reports contain all of the necessary information. These written reports must be sent to the executive director. The reports must include...

#### **§336.341. General Recordkeeping Requirements for Licensees.**

(d) Each licensee shall maintain records showing the receipt, transfer, and disposal of all source material, byproduct material, or other licensed radioactive material. Each licensee shall also maintain any records and make any reports as may shall be required by the conditions of the license, by the rules in this chapter, or by orders of the commission. Copies of any records or reports required by the license, rules, or orders shall be submitted to the executive director or commission on request. All records and reports required by the license, rules, or orders shall be complete and accurate.

### **Chapter 336, Radioactive Substance Rules, Subchapter F**

#### **§336.501. Scope and General Provisions.**

(a) This subchapter establishes alternative criteria, terms, and conditions under which the commission may shall issue, amend, or renew a license for on-site disposal of radioactive material generated in the person's activities, not otherwise specifically authorized in this chapter.

(b) Except as provided by this subsection, the commission shall not authorize new or additional facilities or the expansion of existing facilities for the on-site disposal of low-level radioactive waste, except to a public entity specifically authorized by law for low-level radioactive waste disposal. The commission may shall, on request or its own initiative, authorize, under this subchapter, on-site disposal of low-level radioactive waste on a specific basis at any facility at which low-level radioactive waste disposal operations began before September 1, 1989, if after evaluation of the specific characteristics of the waste, the disposal site, and the method of disposal, the commission finds that the continuation of the disposal activity will not constitute a significant risk to the public health and safety and to the environment.

### **Chapter 336, Radioactive Substance Rules, Subchapter G:**

#### **§336.613. Additional Requirements.**

(c) The executive director may shall approve an alternate schedule for submittal of a decommissioning plan required under §336.625(e)(2) of this title if the executive director determines that...

#### **§336.617. Technical Requirements for Inactive Disposal Sites.**

(a) Content of license application. An applicant for a license to authorize possession of disposed radioactive material and subsequent decommissioning of an inactive disposal site shall submit

the information required in Chapter 305 of this title (relating to Consolidated Permits), and the following, using the application form provided by the agency:

(c) **Performance objectives.** The applicant's submittal shall include sufficient information to enable the executive director to assess the potential hazard to public health and safety and to determine whether the disposal site will have a significant impact on the environment. The executive director shall evaluate existing inactive disposal sites on a case-by-case basis and shall consider the following general criteria and performance objectives in making the evaluation.

#### **§336.621. Recordkeeping for Decommissioning.**

Each person licensed under this subchapter shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the commission. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information important to decommissioning consists of:

(1) records of spills or other unusual occurrences involving the spread of contamination in and around the disposal facility, equipment, or site. These records may shall be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may shall have spread to inaccessible areas, as in the case of possible seepage into porous materials such as concrete. These records must include any known information on identification of involved nuclides, quantities, forms, and concentrations;

(2) as-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are disposed of and of locations of possible inaccessible contamination (e.g., buried pipes) that may shall be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations;

#### **§336.625. Expiration and Termination of Licenses.**

(f) The licensee of an inactive disposal site licensed under §336.615 of this title (relating to Inactive Disposal Sites), shall provide notice of and begin decommissioning within 90 days of license renewal. The owner or operator of an unlicensed inactive disposal site must apply for a license to decommission the site and begin decommissioning within ~~with~~ 90 days of license approval.

(g) All licensees shall follow a commission-approved closure plan for decontamination, decommissioning, restoration, and reclamation of buildings and the site.

(2) The amount of the financial assurance must be increased, or may shall be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established under §336.613(f)(5) of this title (relating to Additional Requirements).

(4) Following approval of the decommissioning plan, with the approval of the executive director, a licensee may shall reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site.

(h) The executive director may grant in writing a request to extend the time periods established in subsections (d), (e), or (f) of this section, or to delay or postpone the decommissioning process, if the executive director determines that this relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted in writing no later than 30 days before notification under subsection (d) or (f) of this section. The schedule for decommissioning set forth in subsection (e) or (f) of this section ~~may~~ shall not commence until the executive director has made a determination on the request.

## **Chapter 336, Radioactive Substance Rules, Subchapter H:**

### **§336.701. Scope and General Provisions.**

(c) In addition to the requirements of this subchapter, all licensees, unless otherwise specified, are subject to the requirements of Subchapters A-E and G of this chapter (relating to General Provisions; Radioactive Substance Fees; General Disposal Requirements; Standards for Protection Against Radiation; Notices, Instructions, and Reports to Workers and Inspections; and Decommissioning Standards). For Subchapter H licensees, the decommissioning and license termination criteria in Subchapter G of this chapter applies only to the ancillary surface facilities.