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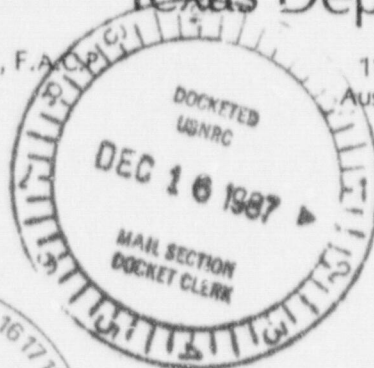
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Date: December 11, 1987

To: Interested Persons

From: Ruth E. McBurney, C.H.P., Administrator *REM*
Standards Branch
Division of Licensing, Registration
and Standards
Bureau of Radiation Control

Subject: Proposed Parts 41, 43, and 44

Enclosed please find proposed amendments to Texas Regulations for Control of Radiation (TRCR) Parts 41, 43, and 44.

The proposed rules will add provisions to the referenced parts that: establish time periods in which the Agency will issue or deny issuance of radioactive material licenses; establish an appeal process for resolution of disputes arising from violation of the established periods; and require any corporate applicant for a license to demonstrate that no delinquent tax is owed the state.

These rules are proposed in order *y* with legislative mandates to State agencies which issue permits.

Please submit any written comments to Ruth E. McBurney, Administrator, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 by January 22, 1988.

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PART 41

LICENSING OF RADIOACTIVE MATERIAL

41.24 amended as follows:

41.24 Filing Application for Specific Licenses

- (a) Applications for specific licenses shall be filed in duplicate on a form prescribed by the Agency.
- (b) The Agency may at any time after the filing of the original application, and before the expiration of the license, require further statements in order to enable the Agency to determine whether the application should be granted or denied or whether a license should be modified or revoked.
- (c) Each application shall be signed by the applicant or licensee or a person duly authorized to act for and on the applicant's or licensee's behalf.
- (d) An application for a license may include a request for a license authorizing one or more activities.
- (e) In the application, the applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the Agency provided such references are clear and specific.
- (f) Applications and documents submitted to the Agency may be made available for public inspection except that the Agency may withhold any document or part thereof from public inspection in accordance with 11.14.
- (g) Each application for a specific license, other than a license exempted from Part 12 of these rules, shall be accompanied by the fee prescribed in 12.21.
- (h) If the applicant is a corporation under the Texas Business Corporation Act, written verification (either affidavit or tax receipt) shall be submitted with the application to confirm that no delinquent tax is owed the state under Chapter 171, Tax Code.
- (i) Applications for licenses shall be processed in accordance with the following time periods.
 - (1) The first period is a time from receipt of an application by the Division of Licensing, Registration and Standards to the date of issuance or denial of the license or a written notice outlining why the application is incomplete or unacceptable. This time period is 60 days.

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- (2) The second period is a time from receipt of the last item necessary to complete the application to the date of issuance or denial of the license. This time period is 30 days.
 - (3) These time periods are exclusive of any time period incident to hearings and past hearing activities required by the Administrative Procedure and Texas Register Act (APTRA), Article 6252-13a, V.T.C.S.
- (j) Notwithstanding the provisions of 12.11(a), reimbursement of application fees may be granted in the following manner.
- (1) In the event the application is not processed in the time periods as stated in 41.24(i), the applicant has the right to request of the Director of the Radiation Control Program full reimbursement of all application fees paid in that particular application process. If the Director does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied.
 - (2) Good cause for exceeding the period established is considered to exist if:
 - (i) the number of applications for licenses to be processed exceeds by 15% or more the number processed in the same calendar quarter the preceding year;
 - (ii) another public or private entity utilized in the application process caused the delay; or
 - (iii) other conditions existed giving good cause for exceeding the established periods.
 - (3) If the request for full reimbursement authorized by 41.24(j)(1) is denied, the applicant may then request a hearing by appeal to the Commissioner of Health for a resolution of the dispute. The appeal will be processed in accordance with the Formal Hearing Procedures of the Texas Department of Health, 25 TAC §1.21 et seq.

PART 43

LICENSING OF URANIUM RECOVERY FACILITIES

43.24 amended as follows:

43.24 Filing Application for Specific Licenses

- (a) Applications for specific licenses shall be filed in ten (10) copies on a form prescribed by the Agency. Applications for issuance of licenses shall include an environmental report which includes the results of a one-year preoperational monitoring program. Applications for renewal of licenses shall include an environmental report which includes the results of the operational monitoring program.

The Agency will, within 60 days after receipt of the application, conduct an administrative review of the application for completeness, and notify the applicant whether or not the application is acceptable for filing. This administrative review of the application shall not constitute the Agency's approval of the adequacy of the information and data contained in the application.

- (b) The Agency may at any time after the filing of the original application, and before the expiration of the license, require further statements or data to enable the Agency to determine whether the application should be denied or whether a license should be granted, modified, or revoked.
- (c) Each application shall be signed by the applicant or licensee or a person legally authorized to act for and on his behalf.
- (d) An application for a license may include a request for one or more activities.
- (e) In any application, the applicant may incorporate information contained in previous applications, statements, or reports filed with the Agency.
- (f) Applications and documents submitted to the Agency will be made available for public inspection except that the Agency may withhold any document or part thereof from public inspection if the applicant or licensee states in writing that disclosure of its content is not required in the public interest and would adversely affect the interest of a person concerned. Exceptions to Agency decisions regarding disclosure are subject to the Texas Open Records Act, Article 6252-17a, V.T.C.S.
- (g) An application for a license shall contain written specifications relating to the uranium recovery facility operations, and the disposition of the by-product material.

Proposed

- (h) Each application must clearly demonstrate how the requirements of 43.24, 43.25, 43.26, 43.30, 43.36, 43.60, 43.70, 43.90, and 43.95 have been addressed. Failure to clearly demonstrate how these requirements have been addressed shall be grounds for refusing to accept an application for filing.
- (i) Each application for a specific license, other than a license exempted from Part 12 of these rules, shall be accompanied by the fee prescribed in 12.21.
- (j) If the applicant is a corporation under the Texas Business Corporation Act, written verification (either affidavit or tax receipt) shall be submitted with application to confirm that no delinquent tax is owed the state under Chapter 171, Tax Code.
- (k) Applications for licenses shall be processed in accordance with the following time periods.
 - (1) The first period is a time from receipt of an application by the Division of Licensing, Registration and Standards to the date of issuance or denial of the license or a written notice outlining why the application is incomplete or unacceptable. This time period is 180 days.
 - (2) The second period is a time from receipt of the last item necessary to complete the application to the date of issuance or denial of the license. This time period is 180 days.
 - (3) These time periods are exclusive of any time period incident to hearings and past hearing activities required by the Administrative Procedure and Texas Register Act (APTRA), Article 6252-13a, V.T.C.S.
- (1) Notwithstanding the provisions of 12.11(a), reimbursement of application fees may be granted in the following manner.
 - (1) In the event the application is not processed in the time periods as stated in 43.24(k), the applicant has the right to request of the Director of the Radiation Control Program full reimbursement of all application fees paid in that particular application process. If the Director does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied.
 - (2) Good cause for exceeding the period established is considered to exist if:
 - (i) the number of applications for licenses to be processed exceeds by 15% or more the number processed in the same calendar quarter the preceding year;
 - (ii) another public or private entity utilized in the application process caused the delay; or

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- (iii) other conditions existed giving good cause for exceeding the established periods.
- (3) If the request for full reimbursement authorized by 43.24(1)(1) is denied, the applicant may then request a hearing by appeal to the Commissioner of Health for a resolution of the dispute. The appeal will be processed in accordance with the Formal Hearing Procedures of the Texas Department of Health, 25 TAC §1.21 et seq.

PART 44

LICENSING OF RADIOACTIVE WASTE PROCESSING AND STORAGE FACILITIES

44.10 amended as follows:

44.10 Filing Application for Specific License

- (a) The applicant for a license to receive, possess, or process radioactive waste from other persons shall submit, on a form supplied by the Agency, ten (10) copies of each license application or application for amendment and any supporting documents. Applications for issuance of licenses shall include all general and specific technical requirements, financial information, and environmental requirements, if applicable, described in this part.
- (b) The Agency may at any time after the submission of the original application, and before the expiration of the license, require further statements or data to enable the Agency to determine whether the application should be denied or whether a license should be granted, modified, or revoked.
- (c) The applicant or licensee or a person legally authorized to act for and on his behalf shall sign each application.
- (d) An application for a license may include a request for one or more of the activities specified in 44.10(a).
- (e) The applicant shall submit any applicable fees prescribed in these rules.
- (f) In the application, the applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the Agency provided such references are clear and specific.
- (g) Public Inspection of Applications
 - (1) Applications or documents submitted to the Agency in connection with licensing actions shall be made available for public inspection in accordance with provisions of Article 6252-17a, V.T.C.S.
 - (2) If the application contains information of the type described in the Texas Open Records Act (Article 6252-17a, V.T.C.S.) which the applicant wishes withheld from public disclosure, such information shall be submitted with the application under separate cover, along with a justification for withholding the information.

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- (h) Each application must clearly demonstrate how the requirements of 44.10, 44.20, 44.30, 44.50, 44.80, and 44.81 have been addressed.
- (i) If the applicant is a corporation under the Texas Business Corporation Act, written verification (either affidavit or tax receipt) shall be submitted with application to confirm that no delinquent tax is owed the state under Chapter 171, Tax Code.
- (j) Applications for licenses shall be processed in accordance with the following time periods.
 - (1) The first period is a time from receipt of an application by the Division of Licensing, Registration and Standards to the date of issuance or denial of the license or a written notice outlining why the application is incomplete or unacceptable. This time period is 90 days.
 - (2) The second period is a time from receipt of the last item necessary to complete the application to the date of issuance or denial of the license. This time period is 90 days.
 - (3) These time periods are exclusive of any time period incident to hearings and past hearing activities required by the Administrative Procedure and Texas Register Act (APTRA), Article 6252-13a, V.T.C.S.
- (k) Notwithstanding the provisions of 12.11(a), reimbursement of application fees may be granted in the following manner.
 - (1) In the event the application is not processed in the time periods as stated in 44.10(j), the applicant has the right to request of the Director of the Radiation Control Program full reimbursement of all application fees paid in that particular application process. If the Director does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied.
 - (2) Good cause for exceeding the period established is considered to exist if:
 - (i) the number of applications for licenses to be processed exceeds by 15% or more the number processed in the same calendar quarter the preceding year;
 - (ii) another public or private entity utilized in the application process caused the delay; or
 - (iii) other conditions existed giving good cause for exceeding the established periods.

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- (3) If the request for full reimbursement authorized by 44.10(k)(1) is denied, the applicant may then request a hearing by appeal to the Commissioner of Health for a resolution of the dispute. The appeal will be processed in accordance with the Formal Hearing Procedures of the Texas Department of Health, 25 TAC §1.21 et seq.