TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AGENDA ITEM REQUEST

for Rulemaking Adoption

AGENDA REQUESTED: May 13, 2015

DATE OF REQUEST: April 24, 2015

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Kris Hogan, (512) 239-6812

CAPTION: Docket No. 2014-1223-RUL. Consideration of adoption of the revisions to 30 Texas Administrative Code (TAC) Chapter 37, Financial Assurance, and 30 TAC Chapter 336, Radioactive Substance Rules.

This rulemaking adoption implements Senate Bill 347, 83rd Texas Legislature, 2013, Regular Session, by amending 30 TAC Sections 37.9045 and 37.9050, which would reference the new environmental perpetual care account and by amending 30 TAC Sections 336.2, 336.105, 336.1111, and 336.1127, and adopting new Section 336.739, to provide for volume reduction of low-level radioactive waste and to meet federal compatibility standards. The adopted rulemaking also implements changes to license application requirements for source material recovery or by-product disposal licenses regarding notification to landowners. The proposed rules were published in the December 5, 2014, issue of the *Texas Register* (39 TexReg 9463 and 9484, respectively).
(Bobby Janecka, Amie Robinson) (Rule Project No. 2013-056-037-WS)

Ashley Forbes *for* Brent Wade
Deputy Director

Charles Maguire
Division Director

Kristina M. Hogan
Agenda Coordinator

Copy to CCC Secretary? NO X YES

Texas Commission on Environmental Quality
Interoffice Memorandum

To: Commissioners **Date:** April 24, 2015

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: Brent Wade, Deputy Director
Office of Waste

Docket No.: 2014-1223-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 37, Financial Assurance
Chapter 336, Radioactive Substance Rules
SB 347: Environmental Perpetual Care Account & Volume Reduction of LLRW
Rule Project No. 2013-056-037-WS

Background and reason(s) for the rulemaking:
Senate Bill (SB) 347 (83rd Texas Legislature, 2013), by Senator Seliger, is the low-level radioactive waste bill, which became effective on September 1, 2013. SB 347 provides that beginning September 1, 2015, the license holder may only accept nonparty waste for disposal if the waste has been volume-reduced and the license holder collects a fee to support the compact commission. However, if volume reduction would change the waste classification to greater than Class C, volume reduction will not be required. SB 347 also directs the TCEQ to implement these volume reduction requirements by rule.

SB 347 also separates the TCEQ funds from the Texas Department of State Health Services (DSHS) funds in the perpetual care account. SB 347 creates a new environmental radiation and perpetual care account for the TCEQ and requires that the 20% surcharge on nonparty waste be deposited into the environmental radiation and perpetual care account. SB 347 requires the commission to deposit security from the licensee into the new Environmental Radiation and Perpetual Care Account, updates security reference to the new Environmental Radiation and Perpetual Care Account, and updates provisions to allow the commission to use money in the new Environmental Radiation and Perpetual Care Account for the Compact Commission.

SB 347 also requires the TCEQ and DSHS to collect a 5% fee on licensees and deposit the fees into their respective perpetual care accounts. SB 347 also repeals the $500,000 cap on the fee and sets a new cap of $100,000,000 (total for both the Radiation and Perpetual Care Account, and the Environmental Radiation and Perpetual Care Account).

SB 347 further provides that the 20% surcharge continues to be collected, regardless of whether the cap is reached. SB 347 carves out two separate caps within the $100,000,000 cap for both compact generators and the uranium industry. Compact generators retain the original $500,000 cap on the amount of fees they are required to pay and the cap for licensees for the extraction, processing, or concentration of uranium or thorium from ore is set at $2 million. Further, license holders for the extraction, processing or concentration of

uranium or thorium form ore is not required to pay the additional fee until they begin operations.

This rulemaking also amends the application requirements for licenses for source material recovery (i.e., uranium mining) and by-product disposal regarding notification to landowners of the licensed activities in §336.1111(1)(H). Under the current rule, an applicant is required to submit a signed certification from the landowners on which radioactive substances are recovered, stored, processed or disposed to reflect the landowner's consent to that activity and to acknowledge that decommissioning of the licensed site is required even if the licensee fails to perform the required decommissioning. The purpose of this provision was to assure that landowners are fully informed of both on-going licensed activities involving radioactive substances on the property and future closure requirements.

The landowner acknowledgement was not intended to provide landowner approval power of a proposed project or disrupt the ability of an applicant to prepare a complete application. Property arrangements between landowners and miners should be addressed in private agreements rather than encumbering the license application process. Instead of requiring landowners' signatures and consent, the adopted amendment will require the applicant to provide notification to the landowners and submit proof of this notification as part of the license application. The notification is in addition to any required public notice under 30 TAC Chapter 39 of the commission's rules.

The other purpose of this rulemaking is to conform with federal requirements. The United States Nuclear Regulatory Commission requires the TCEQ to make conforming changes to rules from time to time. This rulemaking includes changes to rules to ensure the commission's continued compatibility with the United States Nuclear Regulatory Commission, which are: 1) modifying the definition of Total Effective Dose Equivalent and 2) change the assumed annual real interest rate from 2% to 1% for payments to the perpetual care account to cover the costs of long-term care and maintenance.

Scope of the rulemaking:
The rulemaking would amend §336.2 to revise certain definitions to reflect the new dedicated general revenue account created by SB 347 and to make a non-substantive revision. The rulemaking would also amend §§37.9045, 37.9050, 336.105, and 336.1127 to the new name of the dedicated general revenue account created by SB 347. The rulemaking would also adopt new §336.739 to implement volume reduction requirements, prohibiting the disposal of any low-level radioactive waste in Texas which originated from outside of Texas or Vermont and has not been volume reduced by a factor of three, or to the greatest extent possible, with limited exceptions.

A.) Summary of what the rulemaking will do:
The rulemaking would amend §336.2 to revise the definitions of "Perpetual Care Account" and "Environmental Radiation and Perpetual Care Account" to reflect the new name of the

dedicated general revenue account created by SB 347, and to make a non-substantive revision to the definition of "Total Effective Dose Equivalent (TEDE)."

The rulemaking would amend §§37.9045, 37.9050, 336.105, and 336.1127 to reflect the new name of the dedicated general revenue account created by SB 347 and to provide specific language regarding transfer and use of those funds. The rulemaking would amend §336.1127(c) to meet federal compatibility standards, which would change the assumed annual real interest rate from 2% to 1% for payments to the perpetual care account to cover the costs of long-term care and maintenance.

The rulemaking would amend §336.1111(1)(H) regarding the application requirements for notification to landowners for source material recovery and by-product disposal applications.

The rulemaking would also adopt new §336.739 to implement volume reduction requirements, prohibiting the disposal of any low-level radioactive waste in Texas, which originated from outside of Texas or Vermont and has not been volume reduced by a factor of three or to the greatest extent possible, with limited exceptions.

B.) Scope required by federal regulations or state statutes:
SB 347 requires the commission, by rule, to adopt the requirements related to volume reduction in Texas Health and Safety Code (THSC), §401.207.

C.) Additional staff recommendations that are not required by federal rule or state statute:
None. This rulemaking is required in Texas statute.

Statutory authority:
THSC, §§401.051, 401.103, 401.104, and 401.412, and Texas Water Code, §5.103 and §5.105.

Effect on the:
A.) Regulated community:
Both the licensee and generators of low-level radioactive waste will be affected. The licensee will have increased limits on the amount of waste that may be deposited into the facility and will need to comply with new regulatory requirements for nonparty waste. Generators may have to change their current waste processing procedures to comply with volume reduction requirements and may have to pay an additional fee if they cannot comply. The increased cap on the Environmental Radiation and Perpetual Care Account will also impose additional fees on licensees. The decrease in the assumed annual real interest rate in §336.1127(c) will increase the amount of money a licensee for uranium recovery and by-product disposal will need to provide to the perpetual care account to cover the costs of long-term care and maintenance.

The adopted amendment to §336.1111(1)(H) will affect applicants for licenses for uranium recovery and by-product disposal and affect owners of property on which proposed uranium recovery or by-product disposal licensed sites are located.

B.) Public:
There is no direct impact to the public.

C.) Agency programs:
Agency staff will have to monitor for compliance with volume reduction requirements in addition to current regulatory compliance monitoring.

Stakeholder meetings:
There were no stakeholder meetings associated with this rulemaking; however, there was a public hearing for this rulemaking on January 13, 2015, in Austin, Texas.

Public comment:
The commission received seven written comments for, against, and generally about the rulemaking.

The commission received two oral comments. One comment from Waste Control Specialists stated its support of the rule, and one comment from Energy Solutions voiced concerns about volume reduction.

The commission received seven written comments from Waste Control Specialists, Energy Solutions, Advocates for Responsible Disposal in Texas, Electric Power Research Institute, STARS Alliance, the Uranium Committee of the Texas Mining & Reclamation Association, and Exelon Generation. The comments were generally supportive of parts of the rulemaking or expressed concerns about the volume reduction requirements in the rulemaking. Major concerns expressed about the volume reduction requirements included concerns about the possible impacts that volume reduction may have on worker safety or disposal site capacity, practical challenges generators may face in seeking to comply with the requirement, and concerns about the competitive marketplace exemption and other exemptions determined by the executive director.

Significant changes from proposal:
There were three changes to this rule from the proposal as a result of comments after further review by the commission. Three items were removed from new §336.739 on Volume Reduction: a prohibition against volume reduction of a waste resulting in a change of waste classification higher than Class C, because disposal of greater than Class C waste is prohibited elsewhere in rule; a prohibition against volume reduction of a waste resulting in an increase in concentration of radioactivity to exceed certain levels, determined by the executive director, because the executive director already holds the authority to restrict the disposal of such waste through the license as well as under THSC, Chapter 401, Subchapter F, and 30 TAC Chapter 336, Subchapter H; and a possible exception from the requirements to volume reduce waste, applicable to other waste, as determined by the

executive director on a case-by-case basis, because no comments were received which identified any new waste streams that might be eligible for such an exemption so the language was determined to be unnecessary.

Potential controversial concerns and legislative interest:
The rulemaking regarding volume reduction requirements for waste has the potential to be controversial. Since SB 347 has passed, there has been significant interest from parties both within Texas and outside of Texas regarding volume reduction. Further, during the legislative process the industry and the disposal licensees had several discussions with legislative members and industry watch groups on this issue.

Does this rulemaking affect any current policies or require development of new policies?
No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?
The rulemaking is necessary to implement SB 347. There are no alternatives to rulemaking.

Key points in the adoption rulemaking schedule:
***Texas Register* proposal publication date:** December 5, 2014
Anticipated *Texas Register* adoption publication date: May 29, 2015
Anticipated effective date: June 4, 2015
Six-month Texas Register filing deadline: June 5, 2015

Agency contacts:
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Attachments
Senate Bill 347

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Pattie Burnett
Stephen Tatum
Office of General Counsel
Bobby Janecka
Kris Hogan

S.B. No. 347

AN ACT

relating to funding for the operations of the Texas Low-Level Radioactive Waste Disposal Compact Commission and to the disposal of certain low-level radioactive waste.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (d), Section 401.052, Health and Safety Code, as amended by Chapters 580 (H.B. 1678) and 1067 (H.B. 1567), Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(d) Fees assessed under this section:

(1) may provide additional revenue to support the activities of the Texas Low-Level Radioactive Waste Disposal Compact Commission;

(2) may not exceed $10 per cubic foot of shipped low-level radioactive waste;

(3) [~~(2)~~] shall be collected by the department and deposited to the credit of the perpetual care account;

(4) [~~(3)~~] shall be used [~~exclusively~~] by the department for emergency planning for and response to transportation accidents involving low-level radioactive waste, including first responder training in counties through which transportation routes are designated in accordance with Subsection (a); and

(5) [~~(4)~~] may not be collected on waste disposed of

at a federal waste disposal facility [~~shall be suspended when the amount of fees collected reaches $500,000, except that if the balance of fees collected is reduced to $350,000 or less, the assessments shall be reinstituted to bring the balance of fees collected to $500,000~~].

SECTION 2. Subsection (a), Section 401.109, Health and Safety Code, is amended to read as follows:

(a) The department or commission may require a holder of a license issued by the agency to provide security acceptable to the agency to assure performance of the license holder's obligations under this chapter. The department [~~or commission~~] shall deposit security provided to the department under this section to the credit of the perpetual care account. The department [~~or commission~~] by rule shall provide that any evidence of security must be made payable to the credit of the perpetual care account. The commission shall deposit security provided to the commission under this section to the credit of the environmental radiation and perpetual care account. The commission shall provide that security must be made payable to the credit of the environmental radiation and perpetual care account.

SECTION 3. Section 401.152, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The department [~~agency~~] shall use the security provided by the license holder to pay the costs of actions that are taken or that are to be taken under this section. The department [~~agency~~] shall send to the comptroller a copy of its order together with

necessary written requests authorizing the comptroller to:

(1) enforce security supplied by the license holder;

(2) convert an amount of security into cash, as necessary; and

(3) disburse from the security in the radiation and perpetual care account the amount necessary to pay the costs.

(c) The commission shall use the security provided by the license holder to pay the costs of actions taken or to be taken under this section, including costs associated with the Texas Low-Level Radioactive Waste Disposal Compact Commission. The commission shall send to the comptroller a copy of its order together with necessary written requests authorizing the comptroller to:

(1) enforce security supplied by the license holder;

(2) convert an amount of security to cash, as necessary; and

(3) disburse from the security in the environmental radiation and perpetual care account the amount necessary to pay the costs.

SECTION 4. Section 401.207, Health and Safety Code, is amended by adding Subsections (d-1), (d-2), (d-3), and (e-2) and amending Subsections (e), (e-1), and (h) to read as follows:

(d-1) Beginning September 1, 2015, the compact waste disposal facility license holder may accept nonparty compact waste for disposal at the facility only if:

(1) the waste has been volume-reduced, if eligible, by at least a factor of three in a manner consistent with this

subchapter as provided by commission rule; and

(2) the compact waste disposal facility license holder collects a surcharge under Subsection (g).

(d-2) If volume reduction of a low-level radioactive waste stream would result in a change of waste classification to a class higher than Class C, the payment of the fee and compliance with other requirements of Subsection (d-1) do not apply.

(d-3) The commission may assess an additional fee on a nonparty compact waste generator for failing to comply with the volume reduction requirements established under this section. The fee shall be deposited to the credit of the low-level radioactive waste fund under Section 401.249. Fees deposited under this subsection may be transferred and used only to support the operations of the Texas Low-Level Radioactive Waste Disposal Compact Commission under Section 401.251.

(e) The compact waste disposal facility license holder may not collect a fee under this section or enter into a contract for the disposal of nonparty low-level radioactive waste that has been designated as Class A low-level radioactive waste under 10 C.F.R. Section 61.55 and commission rule unless the waste is containerized. The compact waste disposal facility license holder may collect a fee and dispose of:

(1) not more than the greater of:

(A) 1.167 million curies of nonparty compact waste; or

(B) an amount of nonparty compact waste equal to 30 percent of the initial licensed capacity of the facility; and

(2) not more than 275,000 curies of nonparty compact waste in any fiscal year [~~accept more than 50,000 total cubic feet of nonparty compact waste annually. The compact waste disposal facility license holder may not accept more than 120,000 curies of nonparty compact waste annually, except that in the first year the license holder may accept 220,000 curies~~].

(e-1) The legislature by general law may establish revised limits under Subsection (e) after considering the results of the study under Section 401.208.

(e-2) [~~(e-1)~~] The commission's executive director, on completion of the study under Section 401.208, may prohibit the license holder from accepting any additional nonparty compact waste if the commission determines from the study that the capacity of the facility will be limited, regardless of whether the limit under Subsection (f) has been reached.

(h) A surcharge collected under Subsection (g) shall be deposited to the credit of the environmental radiation and perpetual care account [~~low-level radioactive waste fund~~].

SECTION 5. Subsection (c), Section 401.208, Health and Safety Code, is amended to read as follows:

(c) Not later than December 1, 2016 [~~2012~~], the commission shall submit a final report of the results of the study to the standing committees of the senate and the house of representatives with jurisdiction over the disposal of low-level radioactive waste.

SECTION 6. Section 401.218, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) In addition to the fees charged to support the

operations of the Texas Low-Level Radioactive Waste Disposal Compact Commission, the commission's executive director may charge a license holder a fee to cover the administrative costs of the executive director's action to adjust, correct, or otherwise modify a license.

SECTION 7. Section 401.249, Health and Safety Code, is amended by amending Subsection (e) and adding Subsection (f) to read as follows:

(e) The commission may transfer money from the low-level radioactive waste fund to the environmental radiation and perpetual care account to make payments required by the commission under Section 401.303. The commission shall notify the Texas Low-Level Radioactive Waste Disposal Compact Commission of an action the commission takes under this subsection.

(f) The commission shall deposit in the account the portion of the fee collected under Section 401.245 that is calculated to support the activities of the Texas Low-Level Radioactive Waste Disposal Compact Commission as required by Section 4.04(4), Texas Low-Level Radioactive Waste Disposal Compact (Section 403.006 of this code). The fee shall be assessed for party state compact waste and nonparty compact waste.

SECTION 8. Subsections (b) and (c), Section 401.251, Health and Safety Code, are amended to read as follows:

(b) On the first day of each state fiscal year, the comptroller shall transfer from the low-level radioactive waste fund to the low-level radioactive waste disposal compact commission account an amount equal to the amount appropriated for that state

fiscal year. On September 30 of each fiscal year, the comptroller shall transfer the unexpended and unencumbered money from the previous fiscal year in the low-level radioactive waste disposal compact commission account to the low-level radioactive waste fund [~~The commission shall deposit in the account the portion of the fee collected under Section 401.245 that is calculated to support the activities of the Texas Low-Level Radioactive Waste Disposal Compact Commission as required by Section 4.04(4), Texas Low-Level Radioactive Waste Disposal Compact (Section 403.006 of this code)~~].

(c) Money in the low-level radioactive waste disposal compact commission account may be used [~~appropriated~~] only to support the operations of the Texas Low-Level Radioactive Waste Disposal Compact Commission.

SECTION 9. Subsection (d), Section 401.301, Health and Safety Code is amended to read as follows:

(d) The commission and department shall [~~may~~] require that each person who holds a specific license issued by the agency pay to the agency an additional five percent of the appropriate fee set under Subsection (b). Fees collected by the department under this subsection shall be deposited to the credit of the perpetual care account. Fees collected by the commission under this subsection shall be deposited to the environmental radiation and perpetual care account. The fees are not refundable. The holder of a specific license authorizing the extraction, processing, or concentration of uranium or thorium from ore is not required to pay the additional fee described by this subsection before the beginning of operations under the license.

SECTION 10. Subsection (g), Section 401.303, Health and Safety Code, is amended to read as follows:

(g) If a license holder satisfies the obligations under this chapter, the issuing agency shall have the comptroller promptly refund to the license holder from the perpetual care account or the environmental radiation and perpetual care account, as applicable, the excess of the amount of all payments made by the license holder to the issuing agency and the investment earnings of those payments over the amount determined to be required for the continuing maintenance and surveillance of land, buildings, and radioactive material conveyed to the state.

SECTION 11. Subsections (b), (c), (d), (e), (f), and (g), Section 401.305, Health and Safety Code, are amended to read as follows:

(b) The department [~~and commission each~~] shall deposit to the credit of the perpetual care account money and security it receives [~~they receive~~] under this chapter, including an administrative penalty collected by the department under Sections 401.384-401.390 but excluding fees collected under Sections 401.301(a)-(c) and 401.302. Interest earned on money in the perpetual care account shall be credited to the perpetual care account.

(c) Money and security in the perpetual care account may be administered by the department [~~or commission~~] only for storage, maintenance, and distribution of mammography medical records or the decontamination, decommissioning, stabilization, reclamation, maintenance, surveillance, control, storage, and disposal of

radioactive substances for the protection of the public health and safety and the environment under this chapter and for refunds under Section 401.303.

(d) Money and security in the perpetual care account may not be used for normal operating expenses of the department [~~or commission~~].

(e) The department [~~or commission~~] may use money in the perpetual care account to pay for measures:

(1) to prevent or mitigate the adverse effects of abandonment of radioactive substances, default on a lawful obligation, insolvency, or other inability by the holder of a license issued by the department [~~or commission~~] to meet the requirements of this chapter or of department [~~or commission~~] rules;

(2) to assure the protection of the public health and safety and the environment from the adverse effects of ionizing radiation; and

(3) to protect the health and safety of mammography patients by assuring mammography medical records are made available to affected patients.

(f) The department [~~or commission~~] may provide, by the terms of a contract or lease entered into between the department [~~or commission~~] and any person, by the terms of a mammography certification issued by the department [~~or commission~~] to any person, or by the terms of a license issued to any person, for the storage, maintenance, and distribution of mammography medical records. The department [~~or commission~~] may provide, by the terms

of a contract or lease entered into between the department [~~or commission~~] and any person or by the terms of a license issued by the department [~~or commission~~] to any person, for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site or facility subject to department [~~or commission~~] jurisdiction under this chapter as needed to carry out the purpose of this chapter.

(g) The existence of the perpetual care account does not make the department [~~or commission~~] liable for the costs of storage, maintenance, and distribution of mammography medical records arising from a mammography certification holder's failure to store, maintain, and make available mammography medical records or for the costs of decontamination, transfer, transportation, reclamation, surveillance, or disposal of radioactive substances arising from a license holder's abandonment of radioactive substances, default on a lawful obligation, insolvency, or inability to meet the requirements of this chapter or of department [~~or commission~~] rules.

SECTION 12. Subchapter H, Chapter 401, Health and Safety Code, is amended by adding Sections 401.306 and 401.307 to read as follows:

Sec. 401.306. ENVIRONMENTAL RADIATION AND PERPETUAL CARE ACCOUNT. (a) The environmental radiation and perpetual care account is an account in the general revenue fund to support the activities of the Texas Low-Level Radioactive Waste Disposal Compact Commission.

(b) The commission shall deposit to the credit of the environmental radiation and perpetual care account money and

security it receives under this chapter, including fees collected under Section 401.301(d). Interest earned on money in the environmental radiation and perpetual care account shall be credited to the environmental radiation and perpetual care account.

(c) Money and security in the environmental radiation and perpetual care account may be administered by the commission only for the decontamination, decommissioning, stabilization, reclamation, maintenance, surveillance, control, storage, and disposal of radioactive substances for the protection of the public health and safety and the environment under this chapter and for refunds under Section 401.303.

(d) Money and security in the environmental radiation and perpetual care account may not be used for normal operating expenses of the commission.

(e) The commission may use money in the environmental radiation and perpetual care account to pay for measures:

(1) to prevent or mitigate the adverse effects of abandonment of radioactive substances, default on a lawful obligation, insolvency, or other inability by the holder of a license issued by the commission to meet the requirements of this chapter or of commission rules; and

(2) to ensure the protection of the public health and safety and the environment.

(f) The commission may provide, by the terms of a contract or lease entered into between the commission and any person, or by the terms of a license issued to any person, for the decontamination, closure, decommissioning, reclamation,

surveillance, or other care of a site or facility subject to commission jurisdiction under this chapter as needed to carry out the purposes of this chapter.

(g) The existence of the environmental radiation and perpetual care account does not make the commission liable for the costs of decontamination, transfer, transportation, reclamation, surveillance, or disposal of radioactive substances arising from a license holder's abandonment of radioactive substances, default on a lawful obligation, insolvency, or inability to meet the requirements of this chapter or of commission rules.

Sec. 401.307. PERPETUAL CARE ACCOUNT AND ENVIRONMENTAL RADIATION AND PERPETUAL CARE ACCOUNT CAPS. (a) The fees imposed under Sections 401.052(d) and 401.301(d) are suspended when the sum of the balances of the perpetual care account and the environmental radiation and perpetual care account reaches $100 million. The fees are reinstated when the sum of the balances of the perpetual care account and the environmental radiation and perpetual care account falls to $50 million or less.

(b) The surcharge collected under Section 401.207(g) is collected without regard to the balances of the perpetual care account and the environmental radiation and perpetual care account.

(c) Notwithstanding Subsection (a), a fee imposed by the commission under Section 401.301(d) on the holder of a license authorizing the extraction, processing, or concentration of uranium or thorium from ore is suspended when the amount in the environmental radiation and perpetual care account attributable to those fees reaches $2 million. If the amount in that account

attributable to those fees is reduced to $1.5 million or less, the fee is reinstated until the amount reaches $2 million.

(d) Notwithstanding Subsection (a), a fee imposed under Section 401.052(d) is suspended from imposition against a party state compact waste generator when the amount in the perpetual care account attributable to those fees reaches $500,000. If the amount in that account attributable to those fees is reduced to $350,000 or less, the fee is reinstated until the amount reaches $500,000.

(e) This section does not relieve a generator from liability for a transportation accident involving low-level radioactive waste.

SECTION 13. The following sections of the Health and Safety Code are repealed:

(1) Subsection (h), Section 401.245;

(2) Subsection (b), Section 401.2455;

(3) Subsection (e), Section 401.301; and

(4) Section 403.0052.

SECTION 14. (a) As soon as practicable after the effective date of this Act, the Texas Commission on Environmental Quality shall adopt rules to implement Subsection (d-1), Section 401.207, and Subsection (d), Section 401.218, Health and Safety Code, as added by this Act.

(b) As soon as practicable after the effective date of this Act but not later than January 1, 2014, the Texas Commission on Environmental Quality and the Department of State Health Services shall update the portion of the memorandum of understanding between the two agencies under Section 401.069, Health and Safety Code,

that governs each agency's role regarding the regulation and oversight of radioactive materials and sources of radiation.

SECTION 15. The changes in law made by this Act apply only to a contract for the disposal of compact waste or nonparty compact waste that is signed on or after the effective date of this Act. A contract signed before the effective date of this Act is governed by the law in effect on the date the contract was signed, and the former law is continued in effect for that purpose.

SECTION 16. This Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 347 passed the Senate on March 21, 2013, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 24, 2013, by the following vote: Yeas 26, Nays 5.

Secretary of the Senate

I hereby certify that S.B. No. 347 passed the House, with amendments, on May 22, 2013, by the following vote: Yeas 130, Nays 15, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §37.9045 and §37.9050.

The amendments to §37.9045 and §37.9050 are adopted *without changes* to the proposed text as published in the December 5, 2014, issue of the *Texas Register* (39 TexReg 9463) and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The purpose of this rulemaking is to implement Senate Bill (SB) 347, 83rd Texas Legislature, 2013, and its amendments to Texas Health and Safety Code (THSC), Chapter 401 (also known as the Texas Radiation Control Act (TRCA)). The adopted amendments to Chapter 37 establish a new account, subject to appropriations, to fund an Environmental Radiation and Perpetual Care Account to replace the perpetual care account currently in rule.

Corresponding rulemaking is published in this issue of the *Texas Register* concerning 30 TAC Chapter 336, Radioactive Substance Rules.

Section by Section Discussion

§37.9045, Financial Assurance Requirements for Closure, Post Closure, and Corrective Action

The commission adopts amended §37.9045(a)(5) and (6) to reflect that upon such time

that the Environmental Radiation and Perpetual Care Account is certified by legislation that all financial assurance proceeds that may be drawn upon shall be deposited to the Environmental Radiation and Perpetual Care Account rather than the perpetual care account.

§37.9050, Financial Assurance Mechanisms

The commission adopts the amendment to the insurance requirements under §37.9050(f)(4) and (11) by striking reference to the perpetual care account as the recipient of funds directly and instead adds a cross reference to §37.9045(a)(6) that acknowledges the Environmental Radiation and Perpetual Care Account upon certification by legislation.

Final Regulatory Impact Analysis Determination

The commission adopts the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. A "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 rulemaking action implements legislative

requirements in SB 347 regarding funding and subject to appropriation by the legislature of the Environmental Radiation and Perpetual Care Account. The adopted amendments to Chapter 37 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 financial assurance and this fund was already required for these licensing programs. The amendments only change the name for the fund as administered by the commission and the commission will only be implementing an appropriation of the state budget from the legislature and following an order from the Texas Comptroller of Public Accounts. While there could be new costs associated with obtaining a financial assurance mechanism that meets the requirements of the adopted rules, the commission does not expect that the costs to adversely affect the economy, productivity, or competition in a material way.

Furthermore, the adopted rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The adopted rulemaking

action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency.

THSC, Chapter 401, authorizes the commission to regulate the disposal of most radioactive substances in Texas. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. In addition, Texas is an "Agreement State" authorized by the United States Nuclear Regulatory Commission (NRC) to administer a radiation control program under the Atomic Energy Act of 1954, as amended (Atomic Energy Act). The adopted rules are compatible with federal law.

The adopted rules do not exceed an express requirement of state law. THSC, Chapter 401, establishes general requirements, including requirements for public notices, for the licensing and disposal of radioactive substances, source material recovery, and commercial radioactive substances storage and processing. The purpose of the rulemaking is to implement statutory requirements consistent with recent amendments to THSC, Chapter 401, as provided in SB 347.

The adopted rules are compatible with a requirement of a delegation agreement or contract between the state and an agency of the federal government. Texas has been designated as an "Agreement State" by the NRC under the authority of the Atomic

Energy Act. The Atomic Energy Act requires that the NRC find that the state radiation control program is compatible with the NRC requirements for the regulation of radioactive materials and is adequate to protect health and safety. Under the 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, NRC requirements must be implemented to maintain a compatible state program for protection against hazards of radiation. The adopted rules are compatible with the NRC requirements and the requirements for retaining status as an "Agreement State."

These rules are adopted under specific authority of THSC, Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances.

The commission invited public comment on the draft regulatory impact analysis determination during the public comment period. The commission did not receive any comments regarding this section of the preamble.

Takings Impact Assessment

The commission evaluated these adopted rules and performed a preliminary assessment of whether the Private Real Property Rights Preservation Act, Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment indicates that the

Private Real Property Rights Preservation Act does not apply to these adopted rules because these adopted rules implement SB 1604, 80th Texas Legislature, 2007 transferring certain regulatory responsibilities from the Department of State Health Services to the commission and is an action reasonably taken to fulfill an obligation mandated by federal law. Financial assurance is required for these licensing programs under the NRC's requirements.

Nevertheless, the commission further evaluated these adopted rules and performed a preliminary assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of these adopted rules is to implement changes to the TRCA required by SB 347 for the deposit of funds into the Environmental Radiation and Perpetual Care Account. The adopted amendments to Chapter 37 would fund, subject to pending appropriation, by renaming the former perpetual care account, the Environmental Radiation and Perpetual Care Account.

Promulgation and enforcement of these adopted rules would be neither a statutory nor a constitutional taking of private real property. The adopted rules do not affect a landowner's rights in private real property because this rulemaking action does not constitutionally burden, nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. The commission did not receive any comments regarding this section of the preamble.

Public Comment

The commission held a public hearing on January 13, 2015, at 10:00 a.m. in Austin, Texas, at the commission's central office located at 12100 Park 35 Circle. The comment period closed on January 20, 2015. No comments were received regarding the amendments to Chapter 37.

SUBCHAPTER T: FINANCIAL ASSURANCE FOR RADIOACTIVE SUBSTANCES AND AQUIFER RESTORATION

§37.9045, §37.9050

Statutory Authority

The amendments are adopted under specific authority of Texas Health and Safety Code (THSC), Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. In addition to the specific provisions of the Texas Radiation Control Act (TRCA), the amendments are adopted under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under TWC and other laws of the state.

The adopted amendments implement Senate Bill 347, 83rd Texas Legislature, 2013, and its amendments to THSC, Chapter 401 (also known as the TRCA).

§37.9045. Financial Assurance Requirements for Closure, Post Closure, and Corrective Action.

(a) An owner or operator subject to this subchapter shall establish financial assurance for the closure, post closure, and corrective action of the facility that meets the requirements of this section, in addition to the requirements specified under

Subchapters A, B, C, and D of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Closure, Post Closure, and Corrective Action; Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action; and Wording of the Mechanisms for Closure, Post Closure, and Corrective Action).

(1) An owner or operator subject to this subchapter may use any of the mechanisms as specified in §37.9050 of this title (relating to Financial Assurance Mechanisms) to demonstrate financial assurance for closure, post closure, and corrective action. On a case-by-case basis, the executive director may approve other alternative financial assurance mechanisms.

(2) The executive director will respond within 60 days after receiving a written request for a financial assurance reduction in accordance with §37.151 of this title (relating to Decrease in Current Cost Estimate).

(3) An owner or operator may use multiple financial assurance mechanisms provided in §37.41 of this title (relating to Use of Multiple Financial Assurance Mechanisms), but must use only those financial assurance mechanisms as specified in §37.9050 of this title.

(4) The executive director may accept financial assurance established to meet requirements of other federal, state agencies, or local governing bodies for closure or post closure, provided such mechanism complies with the requirements of this chapter and the full amount of financial assurance required for the specific license is clearly identified and committed for use for the purposes of Chapter 336, Subchapters G, H, L, and M of this title (relating to Decommissioning Standards; Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste; Licensing of Source Material Recovery and By-Product Material Disposal Facilities; and Licensing of Radioactive Substances Processing and Storage Facilities).

(5) Proof of forfeiture must not be necessary to collect the financial assurance, so that in the event that the owner or operator does not provide acceptable replacement financial assurance within the required time prior to the expiration, cancellation, or termination of the financial assurance mechanism, the financial assurance provider shall pay the face amount of the financial assurance to the State of Texas for deposit <u>as specified in paragraph (6) of this subsection</u> [to the credit of the perpetual care account].

(6) All financial assurance required <u>under §§336.619, 336.736 - 336.738, 336.1125, and 336.1235 of this title (relating to Financial Assurance for Decommissioning; Liability Coverage and Funding for Disposal Site Closure and Stabilization; Funding for Institutional Control; Funding for Corrective Action;</u>

Financial Assurance Requirements; and Financial Assurance for Storage and Processing) to be converted to cash by direction of the executive director pursuant to §37.101 of this title (relating to Drawing on the Financial Assurance Mechanisms) [under §§336.619, 336.736 - 336.738, 336.1125, 336.1235, and 37.101 of this title (relating to Financial Assurance for Decommissioning; Funding for Disposal Site Closure and Stabilization; Funding for Institutional Control; Funding for Corrective Action; Financial Security Requirements; Financial Assurance for Storage and Processing; and Drawing on the Financial Assurance Mechanisms)] and paragraph (5) of this subsection shall be payable to the State of Texas for deposit to the credit of the perpetual care account or upon the Environmental Radiation and Perpetual Care Account being recreated and rededicated by legislation, then such financial assurance proceeds as described in this subsection shall be paid to the State of Texas for deposit to the credit of the Environmental Radiation and Perpetual Care Account.

(b) Financial assurance for aquifer restoration shall be provided in an amount no less than the cost estimate for aquifer restoration approved for each production area authorization. The executive director shall have discretion to apply financial assurance approved for one production area to the restoration of any other production area.

(c) The owner or operator shall comply with §37.71 of this title (relating to Incapacity of Owners or Operators, Guarantors, or Financial Institutions), except financial assurance must be established within 30 days after such an event.

§37.9050. Financial Assurance Mechanisms.

(a) An owner or operator may satisfy the requirements of a fully funded trust or standby trust fund as provided in §37.201 of this title (relating to Trust Fund), except within 60 days following the executive director's final review and approval of closure or post closure expenditures for reimbursement, release of funds shall occur.

(b) An owner or operator may satisfy the requirements of a surety bond guaranteeing payment as provided in §37.211 of this title (relating to Surety Bond Guaranteeing Payment) except:

(1) the surety must also be licensed in the State of Texas;

(2) cancellation may not occur during the 90 days beginning on the date of receipt of the notice of cancellation; and

(3) the bond must guarantee that the owner or operator will provide alternate financial assurance within 30 days after receipt of a notice of cancellation of the bond.

(c) An owner or operator may satisfy the requirements of an irrevocable standby letter of credit as provided in §37.231 of this title (relating to Irrevocable Standby Letter of Credit), except:

(1) the letter of credit shall be automatically extended unless the issuer provides notice of cancellation at least 90 days before the current expiration date. Under the terms of the letter of credit, the 90 days shall begin on the date when both the owner or operator and the executive director have received the notice, as evidenced by the return receipts; and

(2) in accordance with §37.231(h) of this title, the executive director shall draw on the letter of credit within 30 days after receipt of notice from the issuing institution that the letter of credit will not be extended, or within 60 days of an extension, if the owner or operator fails to establish and obtain approval of such alternate financial assurance from the executive director.

(d) A statement of intent may be used by a governmental entity subject to this subchapter. The statement of intent shall be subject to the executive director's approval and shall include the following:

(1) a statement that funds will be made immediately available upon demand by the executive director;

(2) the signature of an authorized official who has the authority to bind the governmental entity into a financial obligation, and has the authority to sign the statement of intent;

(3) name of facility(ies), license number, and physical and mailing addresses; and

(4) corresponding current cost estimates.

(e) An owner or operator may satisfy the requirements of financial assurance by establishing an external sinking fund as specified in this subsection. An external sinking fund has two components: a sinking fund account and a financial assurance mechanism such that the total of both equals, at all times, the current cost estimate. A sinking fund account is an account segregated from the owner's or operator's assets and is outside the owner's or operator's administrative control. As the value of the sinking fund account increases, the value of the second financial assurance mechanism decreases. When the external sinking fund account is equal to the current cost estimate, the second financial assurance mechanism will no longer be required to be maintained.

(1) An external sinking fund account shall be approved by the executive director and administered by a third party that is regulated and examined by a federal or state agency.

(2) The external sinking fund is established and maintained by setting aside funds periodically, at least annually.

(f) An owner or operator may satisfy the requirements of financial assurance by obtaining insurance that conforms to the requirements of this subsection, in addition to the requirements specified in Subchapters A and B of this chapter (relating to General Financial Assurance Requirements; and Financial Assurance Requirements for Closure, Post Closure, and Corrective Action[, respectively]), and submitting an originally-signed endorsement to the insurance policy to the executive director.

(1) At a minimum, the insurer on the policy must be authorized to transact or be a surplus lines insurer eligible to engage in the business of insurance in Texas and have a minimum financial strength rating of "A" and a financial size category of "XV" as assigned by the A.M. Best Company.

(2) The insurance policy must designate the commission as an additional insured.

(3) The owner or operator must maintain the policy in full force and effect until the executive director consents to termination of the policy. Failure to pay the premium, without substitution of alternate financial assurance as specified in this subchapter, shall constitute a violation of these regulations, warranting such remedy as the executive director deems necessary. Such violation shall be deemed to begin upon receipt by the executive director of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration of the policy.

(4) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the executive director. Cancellation, termination, or failure to renew may not occur, however, during 120 days beginning with the date of receipt of the notice by both the executive director and the owner or operator, as evidenced by the return receipts. The policy must also provide that the insurer shall pay the face amount of the insurance policy to the State of Texas for deposit <u>as specified under §37.9045(a)(6) of this title (relating to Financial Assurance Requirements for Closure, Post Closure, and Corrective Action),</u> [to the credit of the perpetual care account] if the executive director does not approve acceptable replacement financial

assurance within 90 days of receiving notice by certified mail from the insurer of its election to cancel, terminate, or not renew the policy.

(5) The insurance policy may not contain an exclusion for intentional, willful, knowing, or deliberate noncompliance with a statute, regulation, order, notice, or government instruction.

(6) The wording of the endorsement to the insurance policy must be identical to the wording specified in §37.9052 of this title (relating to Endorsement).

(7) The insurance policy must be issued for a face amount at least equal to the current cost estimate for closure, post closure, or corrective action, except when a combination of mechanisms are used in accordance with §37.41 of this title (relating to Use of Multiple Financial Assurance Mechanisms). Actual payments by the insurer shall not change the face amount, although the insurer's future liability shall be lowered by the amount of the payments.

(8) The insurance policy must guarantee that funds shall be available to provide for closure, post closure, or corrective action of the facility. The policy shall also guarantee that once closure, post closure, or corrective action begins, the issuer shall be responsible for paying out funds, up to an amount equal to the face amount of the

policy, upon the direction of the executive director, to such party or parties as the executive director specifies.

(9) An owner or operator or any other person authorized to perform closure, post closure, or corrective action may request reimbursement for closure, post closure, or corrective action expenditures by submitting itemized bills to the executive director. The request shall include an explanation of the expenses and all applicable itemized bills. The owner or operator may request reimbursement for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure, post closure, or corrective action activities, the executive director shall determine whether the closure, post closure, or corrective action expenditures are in accordance with the approved closure, post closure, or corrective action activities or are otherwise justified and, if so, shall instruct the insurer to make reimbursement in such amounts as the executive director specifies in writing. If the executive director has reason to believe that the maximum cost of closure, post closure, or corrective action over the remaining life of the facility will be greater than the face amount of the policy, the executive director may withhold reimbursement of such amounts as deemed prudent until the executive director determines, in accordance with Subchapters A and B of this chapter, that the owner or operator is no longer required to maintain financial assurance requirements for closure, post closure, or corrective action of the facility. If the executive director does not instruct the insurer to make such reimbursements, the

executive director shall provide the owner or operator with a detailed written statement of reasons.

(10) Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85% of the most recent investment rate or of the equivalent coupon issue yield announced by the United States Treasury for 26-week Treasury securities.

(11) Upon notification by the executive director that the institutional control period has begun, the insurer will pay the remaining face amount of the policy to the State of Texas for deposit as specified under §37.9045(a)(6) of this title [to the credit of the perpetual care account].

(g) This subsection applies only to owner or operators required to provide financial assurance under Chapter 336, Subchapter M of this title (relating to Licensing of Radioactive Substances Processing and Storage Facilities). Owners or operators required to provide financial assurance under Chapter 336, Subchapter M of this title may satisfy the requirements of financial assurance by demonstrating that it passes a financial test as provided in §37.251 of this title (relating to Financial Test), except the owner or operator which has issued rated bonds must also meet the criteria of [or]

paragraphs (1) and (3) of this subsection, or the owner or operator which has not issued rated bonds must also meet the criteria of paragraphs (2) and (3) of this subsection.

(1) The owner or operator must have:

(A) tangible net worth of at least ten times the total current cost estimate (or the current amount required if a certification is used) for all closure activities;

(B) assets located in the United States amounting to at least 90% of total assets or at least ten times the total current cost estimate (or the current amount required if a certification is used) for all closure activities;

(C) a current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poor's, or Aaa, Aa, A as issued by Moody's; and

(D) at least one class of equity securities registered under the Securities Exchange Act of 1934.

(2) The owner or operator must have:

(A) tangible net worth greater than $10 million, or of at least ten times the total current cost estimate (or the current amount required if a certification is used) for all closure activities, whichever is greater;

(B) assets located in the United States amounting to at least 90% of total assets or at least ten times the total current cost estimate (or the current amount required if a certification is used) for all closure activities;

(C) a ratio of cash flow divided by total liabilities greater than 0.15; and

(D) a ratio of total liabilities divided by net worth less than 1.5.

(3) To demonstrate that the owner or operator meets the test, it must submit the following items to the executive director:

(A) a letter signed by the owner's or operator's chief financial officer and worded identically to the wording specified in §37.9025(a) of this title (relating to Wording of Financial Assurance Mechanisms); and

(B) a written guarantee, hereafter referred to as "self-guarantee," signed by an authorized representative which meets the requirements specified in

§37.261 of this title (relating to Corporate Guarantee). The wording of the self-guarantee shall be acceptable to the executive director and must include the following:

(i) the owner or operator will fund and carry out the required closure or post closure activities, or upon issuance of an order by the executive director, the owner or operator will set up and fund a trust, as specified in §37.201 of this title [(relating to Trust Fund)] in the name of the owner or operator, in the amount of the current cost estimates; and

(ii) if, at any time, the owner's or operator's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poor's or Moody's, the owner or operator will provide notice in writing of such fact to the executive director within 20 days after publication of the change by the rating service. If the owner's or operator's most recent bond issuance ceases to be rated in any category of "A" or above by both Standard and Poor's and Moody's, the owner or operator no longer meets the requirements of paragraph (1) of this subsection.

(h) This subsection only applies to owners or operators required to provide financial assurance under Chapter 336, Subchapter M of this title. A parent company controlling a majority of the voting stock of the owner or operator may satisfy the requirements of financial assurance by demonstrating that it passes a financial test as specified in §37.251 of this title, and by meeting the requirements of a corporate

guarantee as specified in §37.261 of this title. The guarantor shall also comply with the requirements identified in this subsection.

(1) The wording of the corporate guarantee as specified in §37.361 of this title (relating to Corporate Guarantee) shall also include:

(A) the signatures of two officers of the owner or operator and two officers of the guarantor who are authorized to bind the respective entities; and

(B) the corporate seals.

(2) The guarantor shall also certify and submit to the executive director that the guarantor has:

(A) majority control of the owner or operator;

(B) full authority under the laws of the state under which it is incorporated and its articles of incorporation and bylaws to enter into this corporate guarantee;

(C) full approval from its board of directors to enter into this corporate guarantee; and

(D) authorization of each signatory.

(i) A parent company guarantee may not be used in combination with other financial assurance mechanisms to satisfy the requirements of this subchapter. A financial test by the owner or operator may not be used in combination with any other financial assurance mechanisms to satisfy the requirements of this subchapter or in any situation where the owner or operator has a parent company holding majority control of the voting stock of the company.

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§336.2, 336.105, 336.1111, and 336.1127; and new §336.739.

The amendments to §§336.2, 336.105, 336.1111, and 336.1127 are adopted *without changes* to the proposed text as published in the December 5, 2014, issue of the *Texas Register* (39 TexReg 9484) and will not be republished. New §336.739 is adopted with change to the proposed text as published and will be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The purpose of this rulemaking is to implement Senate Bill (SB) 347, 83rd Texas Legislature, 2013, and its amendments to Texas Health and Safety Code (THSC), Chapter 401 (also known as the Texas Radiation Control Act (TRCA)) and to add non-substantive changes to rules to ensure the commission's continued compatibility with the United States Nuclear Regulatory Commission (NRC). This rulemaking also creates provisions in Chapter 336 for the compact waste disposal facility license holder who may accept nonparty compact waste for disposal at the facility only if it has been volume reduced.

Corresponding rulemaking is published in this issue of the *Texas Register* concerning 30 TAC Chapter 37, Financial Assurance.

Section by Section Discussion

§336.2, Definitions

The commission adopts amended §336.2 to revise the definitions of "Perpetual care account" and "Radiation and Perpetual Care Account" to reflect the new name of the dedicated general revenue account created by SB 347. The definitions have been reorganized to keep them in alphabetical order and renumbered accordingly. The commission adopts an amendment to §336.2(139) to make a non-substantive revision to the definition of "Total effective dose equivalent (TEDE)" to conform to updated federal regulations by adding two sets of parentheses.

§336.105, Schedule of Fees for Other Licenses

The commission adopts amended §336.105(h)(1) to reflect the new name of the dedicated general revenue account created by SB 347.

§336.739, Volume Reduction

The commission adopts new §336.739 to establish new restrictions on the disposal of low-level radioactive waste in Texas, that was generated outside of Texas or Vermont. The restrictions require that any such waste to be disposed in Texas must have been volume reduced to a certain degree. New §336.739 is adopted with revisions from the proposal. The words, "(1) volume reduction of that waste does not result in a change of waste classification to a class higher than Class C; (2) volume reduction does not cause

concentrations of radioactivity of that waste to exceed concentration levels, as determined by the executive director; and (3)" are removed from new §336.739(a). The words, "(5) other waste, as determined by the executive director on a case-by-case basis." are removed from new §336.739(b) and conforming changes made to the section.

§336.1111, Special Requirements for a License Application for Source Material Recovery and By-product Material Disposal Facilities

The commission adopts amended §336.1111(1)(H) regarding the application requirements for a new license for source material recovery (i.e., uranium mining) and by-product disposal facilities. Under the current rule, an applicant is required to submit a signed certification from the landowners on which radioactive substances are recovered, stored, processed or disposed to reflect the landowner's consent to that activity and to acknowledge that decommissioning of the licensed site is required even if the licensee fails to perform the required decommissioning. The purpose of this provision was to assure that landowners are fully informed of both on-going licensed activities involving radioactive substances on the property and future closure requirements. The landowner acknowledgement was not intended to provide landowner approval power of a proposed project or disrupt the ability of an applicant to prepare a complete application. In addition, changes in land ownership can complicate and delay an applicant's need for timely application development and processing. Arrangements between landowners and uranium miners regarding use of the property should be made

in private agreements and not be made part of the commission's license application processing. Instead of requiring landowners' signatures and consent, the adopted amendment will require the applicant to provide notification to the landowners. The notification is in addition to any required public notice under 30 TAC Chapter 39, concerning Public Notice, of the commission's rules. The adopted revisions to §336.1111(1)(H) require an applicant to submit proof of the effort to provide the landowners with notification by certified and regular United States mail that radioactive materials will be recovered, stored, processed or disposed on the property and that the decommissioning of the property may be required and performed on the licensed site even if the licensee is unable to perform the decommissioning. An applicant may be able to submit the required proof in a variety of ways, such as an affidavit from the person responsible for mailing the notification, proof of certified mail receipts, or a description of the efforts implemented to comply with the requirements that is included in the sworn application.

§336.1127, Long-term Care and Maintenance Requirements

The commission adopts amended §336.1127(a) and (c) to reflect the new name of the dedicated general revenue account created by SB 347. The commission also adopts the amendment to §336.1127(c) to decrease the assumed annual real interest rate allowed for certain licensees' financial assurance in order to comply with new federal requirements.

Final Regulatory Impact Analysis Determination

The commission adopts the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. A "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 rulemaking action implements legislative requirements in SB 347 regarding funding and subject to appropriation by the legislature of the Environmental Radiation and Perpetual Care Account. The adopted rulemaking action also implements the option for the low-level radioactive waste disposal compact waste facility license holder to accept nonparty compact waste for disposal only if it is volume-reduced as provided by commission rule and subject to the license holder's surcharge and may be subject to a commission fee. The fees and surcharge if collected at all will be deposited into the Environmental Radiation and Perpetual Care Account. The adoption of the revisions to Chapter 336 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, because financial assurance and this fund was already required for these licensing programs. The adopted rulemaking only changes the name for the fund that is administered by the commission and the commission will only be implementing an appropriation of the state budget from the legislature following an order from the Comptroller of Public Accounts Office. While there could be new costs associated with obtaining a financial assurance mechanism that meets the requirements of the adopted rules, the commission does not expect that the costs to adversely affect the economy, productivity, or competition in a material way.

Furthermore, the adopted rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The adopted rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency.

THSC, Chapter 401, authorizes the commission to regulate the disposal of most radioactive substances in Texas. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. In addition, Texas is an "Agreement State" authorized by the NRC to administer a radiation control program under the Atomic Energy Act of 1954, as amended (Atomic Energy Act). The adopted rules are compatible with federal law.

The adopted rules do not exceed an express requirement of state law. THSC, Chapter 401, establishes general requirements, including requirements for public notices, for the licensing and disposal of radioactive substances, source material recovery, and commercial radioactive substances storage and processing. The purpose of the rulemaking is to implement statutory requirements consistent with recent amendments to THSC, Chapter 401, as provided in SB 347.

The adopted rules are compatible with a requirement of a delegation agreement or contract between the state and an agency of the federal government. Texas has been designated as an "Agreement State" by the NRC under the authority of the Atomic Energy Act. The Atomic Energy Act requires that the NRC find that the state radiation control program is compatible with the NRC requirements for the regulation of

radioactive materials and is adequate to protect health and safety. Under the 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, NRC requirements must be implemented to maintain a compatible state program for protection against hazards of radiation. The adopted rules are compatible with the NRC requirements and the requirements for retaining status as an "Agreement State."

This rulemaking is adopted under the specific authority of THSC, Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances.

The commission invited public comment on the draft regulatory impact analysis determination during the public comment period. The commission did not receive any comments regarding this section of the preamble.

Takings Impact Assessment

The commission evaluated this adopted rulemaking and performed a preliminary assessment of whether the Private Real Property Rights Preservation Act, Texas Government Code, Chapter 2007 is applicable. The commission's preliminary

assessment indicates that the Private Real Property Rights Preservation Act does not apply to this adopted rulemaking because these rules implement SB 1604, 80th Texas Legislature, 2007, transferring certain regulatory responsibilities from Texas Department of State Health Services to the commission and is an action reasonably taken to fulfill an obligation mandated by federal law. Financial assurance is required for these licensing programs under the NRC's requirements.

Nevertheless, the commission further evaluated this adopted rulemaking and performed a preliminary assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of this adopted rulemaking is to implement changes to the TRCA required by SB 347, for the deposit of funds into the Environmental Radiation and Perpetual Care Account. The adopted rule amendments to Chapter 336 would require nonparty compact waste, if eligible, for disposal at the low-level radioactive waste compact disposal facility by the license holder to be volume reduced by a factor of three subject to adopted volume reduction rules and a surcharge collected by the license holder. The surcharge, if collected, will be deposited to the credit of the Environmental Radiation and Perpetual Care Account.

Promulgation and enforcement of this adopted rulemaking would be neither a statutory nor a constitutional taking of private real property. The adopted rules do not affect a landowner's rights in private real property because this rulemaking action does not

constitutionally burden, nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. The commission did not receive any comments regarding this section of the preamble.

Public Comment

The commission held a public hearing on January 13, 2015, at 10:00 a.m. in Austin, Texas, at the commission's central office located at 12100 Park 35 Circle. The comment period closed on January 20, 2015. The commission received two comments at the public hearing. One comment from Waste Control Specialists stated its support of the proposal. One comment from Energy Solutions expressed two concerns that they would

submit in greater detail in formal written comments.

The commission received seven written comments during the comment period. Comments were received from: Waste Control Specialists; Energy Solutions; Advocates for Responsible Disposal in Texas; Electric Power Research Institute; STARS Alliance; Uranium Committee of the Texas Mining & Reclamation Association; and Exelon Generation.

Waste Control Specialists stated its support, generally, for the rule language as written, but encouraged the commission to consider the possible negative impact that volume reduction could have on fee revenue derived from disposal at the site.

The commission responds revisions to the rulemaking are unnecessary because the requirements for volume reduction were included at the direction of the legislature.

Energy Solutions stated that the rulemaking goes beyond the legislative intent of SB 347 and eligibility for volume reduction should be determined entirely by the suitably of waste streams for volume reduction, rather than based on curie concentrations, market competitiveness, or executive director discretion. The comment recommended that the commission remove the exemption from volume reduction requirements when a

competitive market is not present, remove the requirement to volume reduce to the greatest extent possible when reduction by a factor of three is not technically feasible, remove the prohibition on volume reduction from causing concentrations of radioactivity of a waste to exceed certain levels determined by the executive director, and remove the exemption from volume reduction requirements of other waste.

Regarding the comments, generally, the commission responds that the proposed rule language appropriately comports with the requirements and direction in the statute. Regarding the competitive market requirement, the commission responds that the exception is appropriate, given that three of the comments received were in support of that rule provision, as well as the fact that a competitive market either exists currently or will very likely emerge in providing volume reduction services for all waste streams. Regarding the exemption from volume reduction requirements of other waste determined by the executive director on a case by case basis, the commission agrees with the comment, given that none of the comments received identified additional specific waste streams as ineligible for volume reduction, and the language has accordingly been removed from the rule language for adoption.

Regarding the prohibition against volume reduction causing concentrations

of radioactivity to exceed certain levels as determined by the executive director, the commission responds that while the limitation is appropriate, the executive director already holds the authority to restrict the disposal of such waste through the license as well as under THSC, Chapter 401, Subchapter F and related agency rules and will therefore strike that provision since it is duplicative of existing executive director authority. The agency has wide latitude under both statute and rule to limit acceptance of waste to the Compact Waste Facility. Such limitations are especially appropriate to restrict radionuclide concentrations per cubic meter of any volume reduced waste stream that has the potential to limit the long-term viability of the Compact Waste Facility for in-compact generators. Because there is currently only a minimum requirement for volume reduction, it is likely that disposal may be requested for imports that are volume reduced well beyond the 3:1 minimum, thereby creating excessively high concentrations that affect the curie capacity of the facility. Therefore, despite the deletion of the rule provision, the executive director plans to utilize other appropriate regulatory mechanisms for managing radionuclide concentrations of volume reduced waste, such as through the waste acceptance criteria under the license.

Advocates for Responsible Disposal in Texas expressed concern over the possible impact

that volume reduction requirements could have on the future dose levels of the Compact Waste Facility and the limitation that could pose on available capacity for party state generators, further calling for safeguards to be put in place to protect that capacity.

The commission responds by agreeing with the need for safeguards to protect party state capacity, and that the final rule language appropriately does so, in conjunction with existing safeguards over the site.

Electric Power Research Institute stated that limited volume reduction options are available post-generation for Class B and C waste.

The commission responds that the final rule language allows for volume reduction measures taken by generators at the site of generation may be sufficient to satisfy the rule requirements and should mitigate any current lack of existing volume reduction options currently available. Additionally, the competitive market requirement will ensure that a competitive market either exists currently or will very likely emerge in providing volume reduction services for all waste streams.

STARS Alliance stated that no competitive market exists for off-site volume reduction of certain waste streams and that on-site volume reduction methods were limited for

certain Class B and C wastes. STARS Alliance further stated that the proposed language was confusing regarding the prohibition of volume reduction creating a waste stream with a classification higher than Class C.

The commission responds that the language in the adopted rule should provide generators enough flexibility and options for volume reduction to comply with the rule requirement, and specific operational concerns may be further discussed in developing guidance for the requirement. Regarding the language prohibiting waste of a classification higher than Class C, the commission agrees that the wording may lead to confusion and accordingly removes §336.739(a)(1) from the rule as adopted, given that the prohibition against disposal of waste greater than Class C already exists in §336.362.

Uranium Committee of the Texas Mining & Reclamation Association stated support of the rulemaking language regarding special requirements for a license application for source material recovery and by-product material disposal facilities.

Exelon Generation addressed five different issues: 1) TCEQ should publish a list of approved vendors offering volume reduction services; 2) TCEQ should provide an exemption from volume reduction requirements for generators who have achieved volume reduction through certain alternative measures; 3) TCEQ should ensure that a

monopoly is not inadvertently created through the volume reduction requirements; 4) TCEQ should ensure that volume reduction does not create a health risk for disposal site workers due to higher curie concentration; and 5) TCEQ should ensure that dilution of higher class waste with Class A waste is not occurring at waste processor facilities. Regarding the first comment on publishing a vendor list, the commission responds the recommendation will be taken under advisement, particularly in developing the guidance for the requirement.

Regarding the second comment on alternative, on-site volume reduction measures, the commission responds in agreement, and that the adopted rule language allows for such on-site volume reduction measures to be utilized in complying with the requirements. Regarding both the third and fourth comments on creating a monopoly and worker safety, the commission responds in agreement, and that the adopted rule language addresses that concern. Regarding the fifth comment on dilution, the commission responds that existing rules already prohibit reducing the classification of waste through processing including dilution.

SUBCHAPTER A: GENERAL PROVISIONS

§336.2

Statutory Authority

The amendment is adopted under the specific authority of Texas Health and Safety Code (THSC), Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. The amendment is also adopted under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under TWC and other laws of the state.

The amendment is adopted to implement Senate Bill 347, 83rd Texas Legislature, 2013, and its amendments to THSC, Chapter 401 and to add nonsubstantive changes to rules to ensure the commission's continued compatibility with the United States Nuclear Regulatory Commission.

§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 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 Table I of §336.359(d) [§336.359, Appendix B, Table I, Column 1,] 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); 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) Air-purifying respirator--A respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

(9) 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(d)[, Appendix B,] 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).

(10) 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.

(11) Assigned protection factor (APF)--The expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled

concentration can be estimated by dividing the ambient airborne concentration by the APF.

(12) Atmosphere-supplying respirator--A respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.

(13) 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 State Health Services, NRC, or an Agreement State.

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

(15) 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.

(16) 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;

(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;

(C) Any discrete source of radium-226 that is produced, extracted, or converted after extraction, for use for a commercial, medical, or research activity;

(D) Any material that has been made radioactive by use of a particle accelerator, and is produced, extracted, or converted for use for a commercial, medical, or research activity; and

(E) Any discrete source of naturally occurring radioactive material, other than source material, that is extracted or converted after extraction for use in a commercial, medical, or research activity and that the NRC, in consultation with the Administrator of the United States Environmental Protection Agency (EPA), the United States Secretary of Energy, the United States Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security.

(17) CFR--Code of Federal Regulations.

(18) 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.

(19) 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.

(20) Committed dose equivalent ($H_{T,50}$) (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.

(21) Committed effective dose equivalent ($H_{E,50}$) (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.

(22) Compact--The Texas Low-Level Radioactive Waste Disposal Compact established under Texas Health and Safety Code, §403.006 and Texas Low-Level Radioactive Waste Disposal Compact Consent Act, Public Law Number 105-236 (1998).

(23) Compact waste--Low-level radioactive waste that:

(A) is generated in a host state or a party state; or

(B) is not generated in a host state or a party state, but has been approved for importation to this state by the compact commission under §3.05 of the compact established under Texas Health and Safety Code, §403.006.

(24) Compact waste disposal facility--The low-level radioactive waste land disposal facility licensed by the commission under Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) for the disposal of compact waste.

(25) Constraint (dose constraint)--A value above which specified licensee actions are required.

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

(27) Curie (Ci)--See §336.4 of this title (relating to Units of Radioactivity).

(28) Declared pregnant woman--A woman who has voluntarily informed the licensee, in writing, of her pregnancy and the estimated date of conception. The

declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

(29) 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.

(30) 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).

(31) Demand respirator--An atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

(32) 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.

(33) 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(d)[, Appendix B,] 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).

(34) 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 5 rems (0.05 sievert).

(35) Discrete source--A radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical, or research activities.

(36) 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.

(37) Disposable respirator--A respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of respirator are a disposable half-mask respirator or a disposable escape-only SCBA [self-contained breathing apparatus (SCBA)].

(38) 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.

(39) 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.

(40) 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).

(41) 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.

(42) 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.

(43) 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.

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

(45) 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.

(46) Environmental Radiation and Perpetual Care Account--An account in the general revenue fund established for the purposes specified in the Texas Health and Safety Code, §401.306.

(47) [(46)] Exposure--Being exposed to ionizing radiation or to radioactive material.

(48) [(47)] Exposure rate--The exposure per unit of time.

(49) [(48)] External dose--That portion of the dose equivalent received from any source of radiation outside the body.

(50) [(49)] 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.

(51) [(50)] Federal facility waste--Low-level radioactive waste that is the responsibility of the federal government under the Low-Level Radioactive Waste Policy

Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 United States Code, §2021b - 2021j). Excluded from this definition is low-level radioactive waste that is classified as greater than Class C in §336.362 of this title (relating to Appendix E. Classification and Characteristics of Low-Level Radioactive Waste).

(52) [(51)] Federal facility waste disposal facility--A low-level radioactive waste land disposal facility for the disposal of federal facility waste licensed under Subchapters H and J of this chapter (relating to Licensing Requirement of Near-Surface Land Disposal of Low-Level Radioactive Waste, and Federal Facility Waste Disposal Facility).

(53) [(52)] Filtering facepiece (dust mask)--A negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

(54) [(53)] Fit factor--A quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

(55) [(54)] Fit test--The use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

(56) [(55)] 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.

(57) [(56)] 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.

(58) [(57)] Gray (Gy)--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(59) [(58)] Hazardous waste--Hazardous waste as defined in §335.1 of this title (relating to Definitions).

(60) [(59)] Helmet--A rigid respiratory inlet covering that also provides head protection against impact and penetration.

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

(62) [(61)] Hood--A respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

(63) [(62)] Host state--A party state in which a compact facility is located or is being developed. The State of Texas is the host state under the Texas Low-Level Radioactive Waste Disposal Compact, §2.01, established under Texas Health and Safety Code, §403.006.

(64) [(63)] Individual--Any human being.

(65) [(64)] 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.

(66) [(65)] Individual monitoring devices--Devices designed to be worn by a single individual for the assessment of dose equivalent such as film badges, thermoluminescence dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.

(67) [(66)] Inhalation class--See "Class."

(68) [(67)] 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.

(69) [(68)] Internal dose--That portion of the dose equivalent received from radioactive material taken into the body.

(70) [(69)] 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 FR 43421) (relating to Definitions - high-level radioactive wastes in geologic repositories) is not considered a "land disposal facility."

(71) [(70)] Lens dose equivalent (LDE)--The external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm^2).

(72) [(71)] License--See "Specific license."

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

(74) [(73)] Licensee--Any person who holds a license issued by the commission in accordance with the Texas Health and Safety Code, Chapter 401 (Radioactive Materials and Other Sources of Radiation) 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."

(75) [(74)] 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.

(76) [(75)] Loose-fitting facepiece--A respiratory inlet covering that is designed to form a partial seal with the face.

(77) [(76)] 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.

(78) [(77)] 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 State Health Services 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 in this section;

(iv) byproduct material as defined by paragraph (16)(B) - (E) 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.

(79) [(78)] Lung class--See "Class."

(80) [(79)] Member of the public--Any individual except when that individual is receiving an occupational dose.

(81) [(80)] Minor--An individual less than 18 years of age.

(82) [(81)] Mixed waste--A combination of hazardous waste, as defined in §335.1 of this title (relating to Definitions) and low-level radioactive waste. The term includes compact waste and federal facility waste containing hazardous waste.

(83) [(82)] 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.

(84) [(83)] Nationally tracked source--A sealed source containing a quantity equal to or greater than Category 1 or Category 2 levels of any radioactive material listed in §336.351 of this title (relating to Reports of Transactions Involving Nationally Tracked Sources). In this context a sealed source is defined as radioactive material that is sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control. It does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet. Category 1 nationally tracked sources are those containing radioactive

material at a quantity equal to or greater than the Category 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 2 threshold but less than the Category 1 threshold.

(85) [(84)] Naturally occurring or accelerator-produced radioactive material (NARM)--Any naturally occurring or accelerator-produced radioactive material except source material or special nuclear material.

(86) [(85)] 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 State Health Services adopted under Texas Health and Safety Code, §401.106.

(87) [(86)] 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.

(88) [(87)] Negative pressure respirator (tight fitting)--A respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

(89) [(88)] 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.

(90) [(89)] 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.

(91) [(90)] Oil and gas naturally occurring radioactive material (NORM) waste--NORM [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.

(92) [(91)] 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.

(93) [(92)] Particle accelerator--Any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and discharging the resultant particulate or other associated radiation at energies usually in excess of 1 million electron volts (MeV).

(94) [(93)] Party state--Any state that has become a party to the compact in accordance with Article VII of the Texas Low-Level Radioactive Waste Disposal Compact, established under Texas Health and Safety Code, §403.006.

(95) [(94)] Perpetual care account--The Environmental Radiation and Perpetual Care Account [radiation and perpetual care account] as defined in this section.

(96) [(95)] Personnel monitoring equipment--See "Individual monitoring devices."

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

(98) [(97)] Positive pressure respirator--A respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

(99) [(98)] Powered air-purifying respirator (PAPR)--An air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

(100) [(99)] Pressure demand respirator--A positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

(101) [(100)] 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.

(102) [(101)] 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.

(103) [(102)] Qualitative fit test (QLFT)--A pass/fail test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

(104) [(103)] Quality factor (Q)--The modifying factor listed in Table I or II of §336.3(c) or (d) of this title (relating to Units of Radiation Exposure and Dose) that is used to derive dose equivalent from absorbed dose.

(105) [(104)] Quantitative fit test (QNFT)--An assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

(106) [(105)] 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.

(107) [(106)] Rad--See §336.3 of this title (relating to Radiation Exposure and Dose).

(108) [(107)] 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.

[(108) Radiation and Perpetual Care Account--An account in the general revenue fund established for the purposes specified in the Texas Health and Safety Code, §401.305.]

(109) 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.

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

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

(112) 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.

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

(114) Radiobioassay--See "Bioassay."

(115) 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."

(116) Rem--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(117) 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.

(118) 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.

(119) 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.

(120) Roentgen (R)--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(121) 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.

(122) 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.

(123) Self-contained breathing apparatus (SCBA)--An atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

(124) Shallow-dose equivalent (H_s) (which applies to the external exposure of the skin of the whole body or the skin of an extremity)--The dose equivalent at a tissue depth of 0.007 centimeter (seven milligrams/square centimeter).

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

(126) Sievert (Sv)--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(127) Site boundary--That line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee.

(128) 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.

(129) 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 FR 50264) (Transportation of License Material).

(130) 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.

(131) 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 in this paragraph [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.

(132) 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."

(133) State--The State of Texas.

(134) 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.

(135) Supplied-air respirator (SAR) or airline respirator--An atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

(136) 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.

(137) 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.

(138) Tight-fitting facepiece--A respiratory inlet covering that forms a complete seal with the face.

(139) Total effective dose equivalent (TEDE)--The sum of the effective dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

(140) 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).

(141) 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.

(142) 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 FR 50264) (Packaging and Transportation of Radioactive Material).

(143) Type B quantity (for packaging)--A quantity of radioactive material greater than a Type A quantity.

(144) Unrefined and unprocessed ore--Ore in its natural form before any processing, such as grinding, roasting, beneficiating, or refining.

(145) Unrestricted area--Any area that is not a restricted area.

(146) User seal check (fit check)--An action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamyl acetate check.

(147) Very high radiation area--An area, accessible to individuals, in which radiation levels from radiation sources external to the body 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 one meter from any surface that the radiation penetrates.

(148) Violation--An infringement of any provision of the TRCA [Texas Radiation Control Act (TRCA)] or of any rule, order, or license condition of the commission issued under the TRCA or this chapter.

(149) Waste--Low-level radioactive wastes containing source, special nuclear, or byproduct material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in paragraph (16)(B) - (E) of this section.

(150) Week--Seven consecutive days starting on Sunday.

(151) 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(151) (No change to the figure as it exists in TAC.)

Organ Dose Weighting Factors

Organ or Tissue	W_T
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03

Bone surfaces	0.03
Remainder	0.30[1]
Whole body	1.00[2]

1. The value 0.30 results from 0.06 for each of five remainder organs, excluding the skin and the lens of the eye, that receive the highest doses.

2. For the purpose of weighting the external whole body dose (for adding it to the internal dose) a single weighting factor, w_T =1.0, has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until such time as specific guidance is issued.

(152) Whole body--For purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

(153) Worker--An individual engaged in activities under a license issued by the commission and controlled by a licensee, but does not include the licensee.

(154) Working level (WL)--Any combination of short-lived radon daughters in one liter of air that will result in the ultimate emission of 1.3×10^5 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.

(155) 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).

(156) 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.

SUBCHAPTER B: RADIOACTIVE SUBSTANCE FEES

§336.105

Statutory Authority

The amendment is adopted under the specific authority of Texas Health and Safety Code (THSC), Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. The amendment is also adopted under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under TWC and other laws of the state.

The amendment is adopted to implement Senate Bill 347, 83rd Texas Legislature, 2013, and its amendments to THSC, Chapter 401 and to add nonsubstantive changes to rules to ensure the commission's continued compatibility with the United States Nuclear Regulatory Commission.

§336.105. Schedule of Fees for Other Licenses.

(a) Each application for a license under Subchapter F of this chapter (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), Subchapter G of

this chapter (relating to Decommissioning Standards), Subchapter K of this chapter (relating to Commercial Disposal of Naturally Occurring Radioactive Material Waste from Public Water Systems), Subchapter L of this chapter (relating to Licensing of Source Material Recovery and By-product Material Disposal Facilities), or Subchapter M of this chapter (relating to Licensing of Radioactive Substances Processing and Storage Facilities) must be accompanied by an application fee as follows:

(1) facilities regulated under Subchapter F of this chapter: $50,000;

(2) facilities regulated under Subchapter G of this chapter: $10,000;

(3) facilities regulated under Subchapter K of this chapter: $50,000;

(4) facilities regulated under Subchapter L of this chapter: $463,096 for conventional mining; $322,633 for in situ mining; $325,910 for heap leach; and $374,729 for disposal only; or

(A) if the application fee is not sufficient to cover costs incurred by the commission, then the applicant shall submit a supplemental fee to recover the actual costs incurred by the commission for review of the application and any hearings associated with an application for commercial by-product material disposal under

Subchapter L of this chapter in accordance with Texas Health and Safety Code, §401.301(g);

(B) the executive director shall invoice for the amount of the costs incurred quarterly. Payment shall be made within 30 days following the date of the invoice;

(5) facilities regulated under Subchapter M of this chapter: $3,830 for Waste Processing - Class I Exempt; $39,959 for Waste Processing - Class I; $94,661 for Waste Processing - Class II; and $273,800 for Waste Processing - Class III.

(b) An annual license fee shall be paid for each license issued under Subchapters F, G, K, L, and M [Subchapter F, Subchapter G, Subchapter K, Subchapter L, and Subchapter M] of this chapter. The amount of each annual fee is as follows:

(1) facilities regulated under Subchapter F of this chapter: $25,000;

(2) facilities regulated under Subchapter G of this chapter: $8,400;

(3) facilities regulated under Subchapter K of this chapter: $25,000;

(4) facilities regulated under Subchapter L of this chapter that are operational: $60,929.50; or

(A) if the annual fee is not sufficient to cover costs incurred by the commission, a holder of a license for commercial by-product material disposal issued under Subchapter L of this chapter shall submit a supplemental license fee sufficient to recover the actual costs incurred by the commission. This fee shall recover for the state the actual expenses arising from the regulatory activities associated with the license in accordance with Texas Health and Safety Code, §401.412(d);

(B) the executive director shall invoice for the amount of the costs incurred quarterly. Payment shall be made within 30 days following the date of the invoice;

(5) facilities regulated under Subchapter L of this chapter that are in closure: $60,929.50;

(6) facilities regulated under Subchapter L of this chapter that are in post-closure: $52,011.50 for conventional mining; $26,006 for in situ mining; and $52,011.50 for disposal only;

(7) facilities regulated under Subchapter L of this chapter, if additional noncontiguous source material recovery facility sites are authorized under the same license, the annual fee shall be increased by 25% for each additional site and 50% for sites in closure;

(8) facilities regulated under Subchapter L of this chapter, if an authorization for disposal of by-product material is added to a license, the annual fee shall be increased by 25%;

(9) facilities regulated under Subchapter L of this chapter, the following one-time fees apply if added after an environmental assessment has been completed on a facility:

(A) $28,658 for in situ wellfield on noncontiguous property;

(B) $71,651 for in situ satellite;

(C) $11,235 for wellfield on contiguous property;

(D) $50,756 for non-vacuum dryer; or

(E) $71, 651 for disposal (including processing, if applicable) of by-product material; or

(10) facilities regulated under Subchapter M of this chapter: $3,830 for Waste Processing - Class I Exempt; $39,959 for Waste Processing - Class I; $94,661 for Waste Processing - Class II; and $273,800 for Waste Processing - Class III.

(c) An application for a major amendment of a license issued under Subchapter F, G, K, L, or M [Subchapter F, Subchapter G, Subchapter K, Subchapter L, or Subchapter M] of this chapter must be accompanied by an application fee of $10,000.

(d) An application for renewal of a license issued under Subchapter F, G, K, L, or M [Subchapter F, Subchapter G, Subchapter K, Subchapter L, or Subchapter M] of this chapter must be accompanied by an application fee of $35,000.

(e) Upon permanent cessation of all disposal activities and approval of the final decommissioning plan, holders of licenses issued under Subchapter F, K, L, or M [Subchapter F, Subchapter K, Subchapter L, or Subchapter M] of this chapter shall use the applicable fee schedule for subsections (b) and (c) of this section.

(f) For any application for a license issued under this chapter, the commission may assess and collect additional fees from the applicant to recover costs. Recoverable costs include costs incurred by the commission for administrative review, technical review, and hearings associated with the application. The executive director shall send an invoice for the amount of the costs incurred during the period September 1 through August 31 of each year. Payment shall be made within 30 days following the date of the invoice.

(g) If a licensee remitted a biennial licensing fee to the Texas Department of State Health Services during the one year period prior to June 17, 2007, the licensee is not subject to an annual fee under subsection (b) of this section until the expiration of the second year for which the biennial fee was paid.

(h) The commission may charge an additional 5% of annual fee assessed under subsection (b) of this section and §336.103 of this title (relating to Schedule of Fees for Subchapter H Licenses). The fee is non-refundable and will be deposited to the perpetual care account.

(1) The fees collected by the agency in accordance with this subsection shall be deposited to the credit of the <u>Environmental</u> Radiation and Perpetual Care Account, until the fees collectively total $500,000.

(2) If the balance of fees collected in accordance with this subsection is subsequently reduced to $350,000 or less, the agency shall reinstitute assessment of the fee until the balance reaches $500,000.

(i) The holder of a license authorizing disposal of a radioactive substance from other persons shall remit to the commission 5% of the holder's gross receipts received from disposal operations under a license. Payment shall be made within 30 days of the end of each quarter. The end of each quarter is the last day of the months of November, February, May, and August. This subsection does not apply to the disposal of compact waste or federal facility waste.

(j) The holder of a license authorizing disposal of a radioactive substance from other persons shall remit directly to the host county 5% of the gross receipts disposal operations under a license as required in Texas Health and Safety Code, §401.271(2). Payment shall be made within 30 days of the end of each quarter. The end of each quarter is the last day of the months of November, February, May, and August. This subsection does not apply to the disposal of compact waste or federal facility waste.

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

§336.739

Statutory Authority

The new section is adopted under the specific authority of Texas Health and Safety Code (THSC), Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. The new section is also adopted under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under TWC and other laws of the state.

The new section is adopted to implement Senate Bill 347, 83rd Texas Legislature, 2013, and its amendments to THSC, Chapter 401.

§336.739. Volume Reduction.

(a) Beginning September 1, 2015, a licensee may not dispose of low-level radioactive waste, other than party state compact waste, at the Compact Waste Disposal Facility, unless the generator of that waste certifies that the waste has been volume-

reduced by at least a factor of three, or less to the greatest extent possible if it is not technically feasible to reduce it by a factor of three, provided that~~:~~

~~(1) volume reduction of that waste does not result in a change of waste classification to a class higher than Class C;~~

~~(2) volume reduction does not cause concentrations of radioactivity of that waste to exceed concentration levels, as determined by the executive director; and~~

~~(3)~~ at least two unaffiliated commercial radioactive waste processors are licensed companies in operation in the United States and offer low-level radioactive waste volume reduction for that waste.

(b) Wastes that are exempt from these volume reduction requirements include:

(1) irradiated hardware;

(2) solid forms such as non-compactible metals or monoliths;

(3) soils and demolition debris; and

(4) sealed sources~~; and~~

~~(5) other waste, as determined by the executive director on a case-by-case basis~~.

SUBCHAPTER L: LICENSING OF SOURCE MATERIAL RECOVERY AND BY-PRODUCT MATERIAL DISPOSAL FACILITIES
§336.1111, §336.1127

Statutory Authority

The amendments are adopted under the specific authority of Texas Health and Safety Code (THSC), Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. The amendments are also adopted under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under TWC and other laws of the state.

The adopted amendments implement Senate Bill 347, 83rd Texas Legislature, 2013, and its amendments to THSC, Chapter 401 and to add nonsubstantive changes to rules to ensure the commission's continued compatibility with the United States Nuclear Regulatory Commission and implement THSC, §401.2625, regarding the commission's authority to grant licenses for source material recovery and by-product disposal.

§336.1111. Special Requirements for a License Application for Source Material Recovery and By-product Material Disposal Facilities.

In addition to the requirements in §336.1109 of this title (relating to General Requirements for the Issuance of Specific Licenses), a license may be issued if the applicant submits the items in paragraph (1) of this section for agency approval and meets the conditions in paragraphs (2) and (3) of this section.

(1) An application for a license must include the following:

(A) for new licenses, an environmental report that includes the results of a one-year preoperational monitoring program and for renewal of licenses, an environmental report containing the results of the operational monitoring program. Both must also include the following:

(i) description of the proposed project or action;

(ii) area/site characteristics including ecology, geology, topography, hydrology, meteorology, historical and cultural landmarks, and archaeology;

(iii) radiological and nonradiological impacts of the proposed project or action, including waterway and groundwater impacts and any long-term impacts;

(iv) environmental effects of accidents;

(v) by-product material disposal, decommissioning, decontamination, and reclamation and impacts of these activities; and

(vi) site and project alternative;

(B) a closure plan for decontamination, decommissioning, restoration, and reclamation of buildings and the site to levels that would allow unrestricted use and for reclamation of the by-product material disposal areas in accordance with the technical requirements of §336.1129 of this title (relating to Technical Requirements);

(C) proposal of an acceptable form and amount of financial security consistent with the requirements of §336.1125 of this title (relating to Financial Assurance [Security] Requirements);

(D) procedures describing the means employed to meet the requirements of §336.1113(1) and (2) of this title (relating to Specific Terms and Conditions of Licenses) and §336.1129(o) of this title during the operational phase of any project;

(E) specifications for the emissions control and disposition of the by-product material; [and]

(F) for disposal of by-product material received from others, information on the chemical and radioactive characteristics of the wastes to be received, detailed procedures for receiving and documenting incoming waste shipments, and detailed waste acceptance criteria;[.]

(G) an adequate operating, radiation safety, and emergency procedures manual; and

(H) for applications for a new license or applications for license amendments to expand the licensed site, proof of mailed notification to the owner or owners of the real property on which radioactive substances are recovered, stored, processed or disposed. The application for a new license must demonstrate that the owner or owners of the real property were sent by certified and regular United States mail, notification from the applicant stating that: [a signed certification from the owner or owners of the real property on which radioactive substances are recovered, stored, processed, or disposed acknowledging that:]

(i) radioactive substances will be [are] recovered, stored, processed or disposed on the property [with the consent of the property owner or owners]; and

(ii) decommissioning by the agency, a surety, or as directed by order may be required and performed on [of] the licensed site even if the [may be required even if the applicant or] licensee is unable or fails to decommission the licensed site as required by a license, rule or order of the commission.

(2) Except as provided in this section, the applicant shall not commence construction at the site until the agency has issued the license. Commencement of construction prior to issuance of the license shall be grounds for denial of a license. For an application for a new license to dispose of by-product material that was filed with the Texas Department of State Health Services on or before January 1, 2007, the applicant may commence construction as provided in §336.1135 of this title (relating to Construction Activities), at the applicant's own risk, upon the executive director's issuance of the Environmental Analysis provided under §281.21(f) of this title (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance History).

(3) An application for a license must be submitted according to the applicable requirements of the Texas Engineering Practice Act, the Texas Geoscience Practice Act, and the Professional Land Surveying Practices Act.

§336.1127. Long-term Care and Maintenance Requirements.

(a) Unless otherwise provided by the agency, each licensee licensed in accordance with this part for disposal of by-product material shall make payments into the Environmental Radiation and Perpetual Care Account in amounts specified by the agency. The agency shall make such determinations on a case-by-case basis.

(b) The final disposition of by-product material should be such that the need for ongoing active maintenance is eliminated to the maximum extent practicable.

(c) A minimum charge of $250,000 (1978 dollars) or more, if determined by the agency, must be paid into the Environmental Radiation and Perpetual Care Account to cover the costs of long-term care and maintenance. The total charge must be paid prior to the termination of a license. With agency approval, the charge may be paid in installments. The total or unpaid portion of the charge must be covered during the term of the license by additional security meeting the requirements of §336.1125 of this title (relating to Financial Assurance [Security] Requirements). If site surveillance, control,

or maintenance requirements at a particular site are determined, on the basis of a site-specific evaluation, to be significantly greater (for example, if fencing or monitoring is determined to be necessary), the agency may specify a higher charge. The total charge must be such that, with an assumed 1.0% [2.0%] annual real interest rate, the collected funds will yield interest in an amount sufficient to cover the annual costs of site care, surveillance, and where necessary, maintenance. Prior to actual payment, the total charge will be adjusted annually for inflation. The inflation rate to be used is that indicated by the change in the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics.

(d) The requirements of this section apply only to those sites whose ownership is subject to being transferred to the state or the federal government. The total amount of funds collected by the agency in accordance with this section must be transferred to the federal government if title and custody of the by-product material disposal site is transferred to the federal government upon termination of the license.

Mr. Estrada has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed rule does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore does not constitute a taking under Texas Government Code §2007.043.

The Texas Board of Professional Land Surveying invites comments on the proposed amendment to the rules from any member of the public. A written statement should be mailed or delivered to Natalie Jackson, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite156, MC 230, Austin, Texas 78753, by facsimile (FAX) to (512) 239-5253, or by email Natalie.jackson@txls.texas.gov. Comments will be accepted for 30 days following publication in the *Texas Register.*

The rule amendments are proposed under Texas Occupations Code §1071.151 and Government Code §2001.004.

§663.19. Survey Drawing/Written /Description/Report.

(a) All reports shall delineate the relationship between record monuments and the location of the boundaries surveyed; such relationship shall be shown on the survey drawing, if a drawing is prepared, and/or separate report and recited in the description with the appropriate record references recited thereon and therein.

(b) Every description prepared for the purpose of defining boundaries shall provide a definite and unambiguous identification of the location of such boundaries and shall describe all monuments found or placed.

(c) Courses shall be referenced by notation upon the survey drawing to an identifiable and monumented line or an established geodetic system for directional control.

(d) The survey drawing shall bear the Firm name and Firm Registration Number, the land surveyor's name, address, and phone number who is responsible for the land survey, his/her official seal, his/her original signature (see §661.46 of this title (relating to Seal and Oath), and date surveyed.

(e) Boundary monuments found or placed by the land surveyor shall be described upon the survey drawing. The land surveyor shall note upon the survey drawing, which monuments were found, which monuments were placed as a result of his/her survey, and other monuments of record dignity relied upon to establish the corners of the property surveyed.

(f) A reference shall be cited on the drawing and prepared description[~~, if appropriate,~~] to the record instrument that defines the location of adjoining boundaries.

(g) If any report consists of more than one part, each part shall note the existence of the other part or parts.

(h) If a land surveyor provides a written narrative in lieu of a drawing/sketch to report the results of a survey, the written narrative shall contain sufficient information to demonstrate the survey was conducted in compliance with the Act and rules of the Board.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2014.

TRD-201405590
Tony Estrada
Executive Director
Texas Board of Professional Land Surveying
Earliest possible date of adoption: January 4, 2015
For further information, please call: (512) 239-5263

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 37. FINANCIAL ASSURANCE

SUBCHAPTER T. FINANCIAL ASSURANCE FOR RADIOACTIVE SUBSTANCES AND AQUIFER RESTORATION

30 TAC §37.9045, §37.9050

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §37.9045 and §37.9050.

Background and Summary of the Factual Basis for the Proposed Rules

The purpose of this rulemaking is to implement Senate Bill (SB) 347, 83rd Texas Legislature, 2013, and its amendments to Texas Health and Safety Code (THSC), Chapter 401 (also known as the Texas Radiation Control Act (TRCA)). The proposed amendments to Chapter 37 establish a new account, subject to appropriations, to fund an Environmental Radiation and Perpetual Care Account to replace the perpetual care account currently in rule.

Corresponding rulemaking is published in this issue of the *Texas Register* concerning 30 TAC Chapter 336, Radioactive Substance Rules. Section by Section Discussion

§37.9045, Financial Assurance Requirements for Closure, Post Closure, and Corrective Action

The commission proposes to amend §37.9045(a)(5) and (6) to reflect that upon such time that the Environmental Radiation and Perpetual Care Account is certified by legislation that all financial assurance proceeds that may be drawn upon shall be deposited to the Environmental Radiation and Perpetual Care Account rather than the perpetual care account.

§37.9050, Financial Assurance Mechanisms

The commission proposes to amend the insurance requirements under §37.9050(f)(4) and (11) by striking reference to the perpetual care account as the recipient of funds directly and instead add a cross reference to §37.9045(a)(6) that acknowledges the Environmental Radiation and Perpetual Care Account upon certification by legislation.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of the administration or the enforcement of the proposed rules.

The proposed rulemaking would implement portions of SB 347. SB 347 created a new account within the General Revenue Fund to be called the Environmental Radiation and Perpetual Care Account, for the use of the TCEQ to prevent or mitigate the adverse effects of radioactive substances and ensure protection of public health. Funds in the account could be used for the decontamination, decommissioning, stabilization, reclamation, maintenance, surveillance, control, storage, and disposal of radioactive substances for the protection of the public health and safety and the environment. The account would consist of fees on licenses and registrations as well as revenues from the 20% surcharge on nonparty compact waste previously deposited into the Low Level Radioactive Waste Account 088. This surcharge would now be deposited into the newly-created Environmental Radiation and Perpetual Care Account, instead of Account 088. However, as part of the legislature's funds consolidation efforts, through the passage of House Bill 6, 83rd Texas Legislature, 2013, the account was abolished just after it was established. Fee revenue that was required by SB 347 to be deposited into the new Environmental Radiation and Perpetual Care Account is now going into the General Revenue Fund.

In anticipation of the re-creation of the Environmental Radiation and Perpetual Care Account by the 84th Texas Legislature, 2015, and the re-dedication of funds in the account for low-level radioactive site closure, post closure and corrective action activities, and to implement provisions of SB 347, the commission is proposing this rulemaking.

The proposed amendments to Chapter 37 would amend financial assurance requirements to allow financial assurance that is converted to cash and payable to the State of Texas to be deposited into the Environmental Radiation and Perpetual Care Account (or the perpetual care account). The proposed rulemaking would also insert the name of the Environmental Radiation and Perpetual Care Account into other appropriate provisions of Chapter 37. No fiscal implications are anticipated from the proposed rules. Even if the account was legislatively re-created, the proposed changes merely identify an account that may be used for financial assurance for corrective action and post closure activities.

In concurrent rulemaking, the commission is proposing amendments to Chapter 336 which would implement other provisions of SB 347. The fiscal implications for these amendments are discussed in the fiscal note for the Chapter 336 rulemaking. Public Benefits and Costs Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be the potential for a dedicated account and funding for post closure and corrective action activities associated with the low-level radioactive waste disposal site, assuming the legislature re-creates the account.

No fiscal implications are anticipated for businesses or individuals as a result of the proposed rulemaking. The changes in the proposed rules merely identify an account that may be used for financial assurance for corrective action and post closure activities. This account was created and then abolished by the 83rd Texas Legislature, 2013, but it is assumed that the account will be re-created as TCEQ and the Texas Department of State Health Services (DSHS) each require their respective perpetual care accounts for the entities they regulate.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect small or micro-businesses and are required to implement state law and therefore are consistent with the health, safety, or environmental and economic welfare of the state.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission proposes the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. A "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 proposed rulemaking action implements legislative requirements in SB 347 regarding funding and subject to appropriation by the legislature of the Environmental Radiation and Perpetual Care Account. The proposed amendments to Chapter 37 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 financial assurance and this fund was already required for these licensing programs. The amendments only change the name for the fund as administered by the commission and the commission will only be implementing an appropriation of the state budget from the legislature and following an order from the Texas Comptroller of Public Accounts. While there could be new costs associated with obtaining a financial assurance mechanism that meets the requirements of the proposed rules, the commission does not expect that the costs to adversely affect the economy, productivity, or competition in a material way.

Furthermore, the proposed rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delega-

tion agreement, nor does it adopt a rule solely under the general powers of the agency.

THSC, Chapter 401, authorizes the commission to regulate the disposal of most radioactive substances in Texas. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. In addition, Texas is an "Agreement State" authorized by the United States Nuclear Regulatory Commission (NRC) to administer a radiation control program under the Atomic Energy Act of 1954, as amended (Atomic Energy Act). The proposed rules are compatible with federal law. The proposed rules do not exceed an express requirement of state law. THSC, Chapter 401, establishes general requirements, including requirements for public notices, for the licensing and disposal of radioactive substances, source material recovery, and commercial radioactive substances storage and processing. The purpose of the rulemaking is to implement statutory requirements consistent with recent amendments to THSC, Chapter 401, as provided in SB 347.

The proposed rules are compatible with a requirement of a delegation agreement or contract between the state and an agency of the federal government. Texas has been designated as an "Agreement State" by the NRC under the authority of the Atomic Energy Act. The Atomic Energy Act requires that the NRC find that the state radiation control program is compatible with the NRC requirements for the regulation of radioactive materials and is adequate to protect health and safety. Under the 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, NRC requirements must be implemented to maintain a compatible state program for protection against hazards of radiation. The proposed rules are compatible with the NRC requirements and the requirements for retaining status as an "Agreement State." These rules are proposed under specific authority of THSC, Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated these proposed rules and performed a preliminary assessment of whether the Private Real Property Rights Preservation Act, Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment indicates that the Private Real Property Rights Preservation Act does not apply to these proposed rules because these proposed rules implement SB 1604, 80th Texas Legislature, 2007, transferring certain regulatory responsibilities from the DSHS to the commission and is an action reasonably taken to fulfill an obligation mandated by federal law. Financial assurance is required for these licensing programs under the NRC's requirements.

Nevertheless, the commission further evaluated these proposed rules and performed a preliminary assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of these proposed rules is to implement changes to the TRCA required by SB 347 for the deposit of funds into the Environmental Radiation and Perpetual Care Account. The proposed amendments to Chapter 37 would fund, subject to pending appropriation, by renaming the former perpetual care account, the Environmental Radiation and Perpetual Care Account. Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. The proposed rules do not affect a landowner's rights in private real property because this rulemaking action does not constitutionally burden, nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on January 13, 2015, at 10:00 a.m., in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-056-037-WS. The comment period closes on January 20, 2015. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For further information, please contact Bobby Janecka, Radioactive Material Licensing Section, (512) 239-6415.

Statutory Authority

The amendments are proposed under specific authority of Texas Health and Safety Code (THSC), Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. In addition to the specific provisions of the Texas Radiation Control

Act (TRCA), the amendments are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under TWC and other laws of the state.

The proposed amendments implement Senate Bill 347, 83rd Texas Legislature, 2013, and its amendments to THSC, Chapter 401 (also known as the TRCA).

§37.9045. Financial Assurance Requirements for Closure, Post Closure, and Corrective Action.

(a) An owner or operator subject to this subchapter shall establish financial assurance for the closure, post closure, and corrective action of the facility that meets the requirements of this section, in addition to the requirements specified under Subchapters A, B, C, and D of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Closure, Post Closure, and Corrective Action; Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action; and Wording of the Mechanisms for Closure, Post Closure, and Corrective Action).

(1) An owner or operator subject to this subchapter may use any of the mechanisms as specified in §37.9050 of this title (relating to Financial Assurance Mechanisms) to demonstrate financial assurance for closure, post closure, and corrective action. On a case-by-case basis, the executive director may approve other alternative financial assurance mechanisms.

(2) The executive director will respond within 60 days after receiving a written request for a financial assurance reduction in accordance with §37.151 of this title (relating to Decrease in Current Cost Estimate).

(3) An owner or operator may use multiple financial assurance mechanisms provided in §37.41 of this title (relating to Use of Multiple Financial Assurance Mechanisms), but must use only those financial assurance mechanisms as specified in §37.9050 of this title.

(4) The executive director may accept financial assurance established to meet requirements of other federal, state agencies, or local governing bodies for closure or post closure, provided such mechanism complies with the requirements of this chapter and the full amount of financial assurance required for the specific license is clearly identified and committed for use for the purposes of Chapter 336, Subchapters G, H, L, and M of this title (relating to Decommissioning Standards; Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste; Licensing of Source Material Recovery and By-Product Material Disposal Facilities; and Licensing of Radioactive Substances Processing and Storage Facilities).

(5) Proof of forfeiture must not be necessary to collect the financial assurance, so that in the event that the owner or operator does not provide acceptable replacement financial assurance within the required time prior to the expiration, cancellation, or termination of the financial assurance mechanism, the financial assurance provider shall pay the face amount of the financial assurance to the State of Texas for deposit as specified in paragraph (6) of this subsection [~~to the credit of the perpetual care account~~].

(6) All financial assurance required under §§336.619, 336.736 - 336.738, 336.1125, and 336.1235 of this title (relating to Financial Assurance for Decommissioning; Liability Coverage and Funding for Disposal Site Closure and Stabilization; Funding for Institutional Control; Funding for Corrective Action; Financial Assurance Requirements; and Financial Assurance for Storage and Processing) to be converted to cash by direction of the executive director pursuant to §37.101 of this title (relating to Drawing on the Financial Assurance Mechanisms) [~~under §§336.619, 336.736 - 336.738, 336.1125, 336.1235, and 37.101 of this title (relating to Financial Assurance for Decommissioning; Funding for Disposal Site Closure and Stabilization; Funding for Institutional Control; Funding for Corrective Action; Financial Security Requirements; Financial Assurance for Storage and Processing; and Drawing on the Financial Assurance Mechanisms)~~] and paragraph (5) of this subsection shall be payable to the State of Texas for deposit to the credit of the perpetual care account or upon the Environmental Radiation and Perpetual Care Account being recreated and rededicated by legislation, then such financial assurance proceeds as described in this subsection shall be paid to the State of Texas for deposit to the credit of the Environmental Radiation and Perpetual Care Account.

(b) Financial assurance for aquifer restoration shall be provided in an amount no less than the cost estimate for aquifer restoration approved for each production area authorization. The executive director shall have discretion to apply financial assurance approved for one production area to the restoration of any other production area.

(c) The owner or operator shall comply with §37.71 of this title (relating to Incapacity of Owners or Operators, Guarantors, or Financial Institutions), except financial assurance must be established within 30 days after such an event.

§37.9050. Financial Assurance Mechanisms.

(a) An owner or operator may satisfy the requirements of a fully funded trust or standby trust fund as provided in §37.201 of this title (relating to Trust Fund), except within 60 days following the executive director's final review and approval of closure or post closure expenditures for reimbursement, release of funds shall occur.

(b) An owner or operator may satisfy the requirements of a surety bond guaranteeing payment as provided in §37.211 of this title (relating to Surety Bond Guaranteeing Payment) except:

(1) the surety must also be licensed in the State of Texas;

(2) cancellation may not occur during the 90 days beginning on the date of receipt of the notice of cancellation; and

(3) the bond must guarantee that the owner or operator will provide alternate financial assurance within 30 days after receipt of a notice of cancellation of the bond.

(c) An owner or operator may satisfy the requirements of an irrevocable standby letter of credit as provided in §37.231 of this title (relating to Irrevocable Standby Letter of Credit), except:

(1) the letter of credit shall be automatically extended unless the issuer provides notice of cancellation at least 90 days before the current expiration date. Under the terms of the letter of credit, the 90 days shall begin on the date when both the owner or operator and the executive director have received the notice, as evidenced by the return receipts; and

(2) in accordance with §37.231(h) of this title, the executive director shall draw on the letter of credit within 30 days after receipt of notice from the issuing institution that the letter of credit will not be extended, or within 60 days of an extension, if the owner or operator fails to establish and obtain approval of such alternate financial assurance from the executive director.

(d) A statement of intent may be used by a governmental entity subject to this subchapter. The statement of intent shall be subject to the executive director's approval and shall include the following:

(1) a statement that funds will be made immediately available upon demand by the executive director;

(2) the signature of an authorized official who has the authority to bind the governmental entity into a financial obligation, and has the authority to sign the statement of intent;

(3) name of facility(ies), license number, and physical and mailing addresses; and

(4) corresponding current cost estimates.

(e) An owner or operator may satisfy the requirements of financial assurance by establishing an external sinking fund as specified in this subsection. An external sinking fund has two components: a sinking fund account and a financial assurance mechanism such that the total of both equals, at all times, the current cost estimate. A sinking fund account is an account segregated from the owner's or operator's assets and is outside the owner's or operator's administrative control. As the value of the sinking fund account increases, the value of the second financial assurance mechanism decreases. When the external sinking fund account is equal to the current cost estimate, the second financial assurance mechanism will no longer be required to be maintained.

(1) An external sinking fund account shall be approved by the executive director and administered by a third party that is regulated and examined by a federal or state agency.

(2) The external sinking fund is established and maintained by setting aside funds periodically, at least annually.

(f) An owner or operator may satisfy the requirements of financial assurance by obtaining insurance that conforms to the requirements of this subsection, in addition to the requirements specified in Subchapters A and B of this chapter (relating to General Financial Assurance Requirements; and Financial Assurance Requirements for Closure, Post Closure, and Corrective Action[~~, respectively~~]), and submitting an originally-signed endorsement to the insurance policy to the executive director.

(1) At a minimum, the insurer on the policy must be authorized to transact or be a surplus lines insurer eligible to engage in the business of insurance in Texas and have a minimum financial strength rating of "A" and a financial size category of "XV" as assigned by the A.M. Best Company.

(2) The insurance policy must designate the commission as an additional insured.

(3) The owner or operator must maintain the policy in full force and effect until the executive director consents to termination of the policy. Failure to pay the premium, without substitution of alternate financial assurance as specified in this subchapter, shall constitute a violation of these regulations, warranting such remedy as the executive director deems necessary. Such violation shall be deemed to begin upon receipt by the executive director of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration of the policy.

(4) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the executive director. Cancellation, termination, or failure to renew may not occur, however, during 120 days beginning with the date of receipt of the notice by both the executive director and the owner or operator, as evidenced by the return receipts. The policy must also provide that the insurer shall pay the face amount of the insurance policy to the State of Texas for deposit as specified under §37.9045(a)(6) of this title (relating to Financial Assurance Requirements for Closure, Post Closure, and Corrective Action), [~~to the credit of the perpetual care account~~] if the executive director does not approve acceptable replacement financial assurance within 90 days of receiving notice by certified mail from the insurer of its election to cancel, terminate, or not renew the policy.

(5) The insurance policy may not contain an exclusion for intentional, willful, knowing, or deliberate noncompliance with a statute, regulation, order, notice, or government instruction.

(6) The wording of the endorsement to the insurance policy must be identical to the wording specified in §37.9052 of this title (relating to Endorsement).

(7) The insurance policy must be issued for a face amount at least equal to the current cost estimate for closure, post closure, or corrective action, except when a combination of mechanisms are used in accordance with §37.41 of this title (relating to Use of Multiple Financial Assurance Mechanisms). Actual payments by the insurer shall not change the face amount, although the insurer's future liability shall be lowered by the amount of the payments.

(8) The insurance policy must guarantee that funds shall be available to provide for closure, post closure, or corrective action of the facility. The policy shall also guarantee that once closure, post closure, or corrective action begins, the issuer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the executive director, to such party or parties as the executive director specifies.

(9) An owner or operator or any other person authorized to perform closure, post closure, or corrective action may request reimbursement for closure, post closure, or corrective action expenditures by submitting itemized bills to the executive director. The request shall include an explanation of the expenses and all applicable itemized bills. The owner or operator may request reimbursement for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure, post closure, or corrective action activities, the executive director shall determine whether the closure, post closure, or corrective action expenditures are in accordance with the approved closure, post closure, or corrective action activities or are otherwise justified and, if so, shall instruct the insurer to make reimbursement in such amounts as the executive director specifies in writing. If the executive director has reason to believe that the maximum cost of closure, post closure, or corrective action over the remaining life of the facility will be greater than the face amount of the policy, the executive director may withhold reimbursement of such amounts as deemed prudent until the executive director determines, in accordance with Subchapters A and B of this chapter, that the owner or operator is no longer required to maintain financial assurance requirements for closure, post closure, or corrective action of the facility. If the executive director does not instruct the insurer to make such reimbursements, the executive director shall provide the owner or operator with a detailed written statement of reasons.

(10) Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85% of the most recent investment rate or of the equivalent coupon issue yield announced by the United States Treasury for 26-week Treasury securities.

(11) Upon notification by the executive director that the institutional control period has begun, the insurer will pay the remaining face amount of the policy to the State of Texas for deposit as specified

under §37.9045(a)(6) of this title [~~to the credit of the perpetual care account~~].

(g) This subsection applies only to owner or operators required to provide financial assurance under Chapter 336, Subchapter M of this title (relating to Licensing of Radioactive Substances Processing and Storage Facilities). Owners or operators required to provide financial assurance under Chapter 336, Subchapter M of this title may satisfy the requirements of financial assurance by demonstrating that it passes a financial test as provided in §37.251 of this title (relating to Financial Test), except the owner or operator which has issued rated bonds must also meet the criteria of [~~or~~] paragraphs (1) and (3) of this subsection, or the owner or operator which has not issued rated bonds must also meet the criteria of paragraphs (2) and (3) of this subsection.

(1) The owner or operator must have:

(A) tangible net worth of at least ten times the total current cost estimate (or the current amount required if a certification is used) for all closure activities;

(B) assets located in the United States amounting to at least 90% of total assets or at least ten times the total current cost estimate (or the current amount required if a certification is used) for all closure activities;

(C) a current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poor's, or AAA, AA, A as issued by Moody's; and

(D) at least one class of equity securities registered under the Securities Exchange Act of 1934.

(2) The owner or operator must have:

(A) tangible net worth greater than $10 million, or of at least ten times the total current cost estimate (or the current amount required if a certification is used) for all closure activities, whichever is greater;

(B) assets located in the United States amounting to at least 90% of total assets or at least ten times the total current cost estimate (or the current amount required if a certification is used) for all closure activities;

(C) a ratio of cash flow divided by total liabilities greater than 0.15; and

(D) a ratio of total liabilities divided by net worth less than 1.5.

(3) To demonstrate that the owner or operator meets the test, it must submit the following items to the executive director:

(A) a letter signed by the owner's or operator's chief financial officer and worded identically to the wording specified in §37.9025(a) of this title (relating to Wording of Financial Assurance Mechanisms); and

(B) a written guarantee, hereafter referred to as "self-guarantee," signed by an authorized representative which meets the requirements specified in §37.261 of this title (relating to Corporate Guarantee). The wording of the self-guarantee shall be acceptable to the executive director and must include the following:

(i) the owner or operator will fund and carry out the required closure or post closure activities, or upon issuance of an order by the executive director, the owner or operator will set up and fund a trust, as specified in §37.201 of this title [~~(relating to Trust Fund)~~] in the name of the owner or operator, in the amount of the current cost estimates; and

(ii) if, at any time, the owner's or operator's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poor's or Moody's, the owner or operator will provide notice in writing of such fact to the executive director within 20 days after publication of the change by the rating service. If the owner's or operator's most recent bond issuance ceases to be rated in any category of "A" or above by both Standard and Poor's and Moody's, the owner or operator no longer meets the requirements of paragraph (1) of this subsection.

(h) This subsection only applies to owners or operators required to provide financial assurance under Chapter 336, Subchapter M of this title. A parent company controlling a majority of the voting stock of the owner or operator may satisfy the requirements of financial assurance by demonstrating that it passes a financial test as specified in §37.251 of this title, and by meeting the requirements of a corporate guarantee as specified in §37.261 of this title. The guarantor shall also comply with the requirements identified in this subsection.

(1) The wording of the corporate guarantee as specified in §37.361 of this title (relating to Corporate Guarantee) shall also include:

(A) the signatures of two officers of the owner or operator and two officers of the guarantor who are authorized to bind the respective entities; and

(B) the corporate seals.

(2) The guarantor shall also certify and submit to the executive director that the guarantor has:

(A) majority control of the owner or operator;

(B) full authority under the laws of the state under which it is incorporated and its articles of incorporation and bylaws to enter into this corporate guarantee;

(C) full approval from its board of directors to enter into this corporate guarantee; and

(D) authorization of each signatory.

(i) A parent company guarantee may not be used in combination with other financial assurance mechanisms to satisfy the requirements of this subchapter. A financial test by the owner or operator may not be used in combination with any other financial assurance mechanisms to satisfy the requirements of this subchapter or in any situation where the owner or operator has a parent company holding majority control of the voting stock of the company.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6812

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CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

~~time of the annual vehicle registration as part of the vehicle emissions inspection fee.~~]

(1) Vehicle owners in counties participating in Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) shall remit $4.50 for motor vehicles subject to vehicle emissions inspections to the Texas Department of Motor Vehicles (DMV) or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee. Of the $4.50 remitted, $2.00 constitutes the LIRAP fee as defined in §114.7 of this title (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions).

(2) Vehicle owners in counties participating in the LIRAP and in the process of opting out shall remit $4.50 for motor vehicles subject to emissions inspection to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in §114.7 of this title. Of the $4.50 remitted, $2.00 constitutes the LIRAP fee as defined in §114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners in participating counties that are in the process of opting out of the LIRAP shall remit $2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(3) Vehicle owners in counties not participating in the LIRAP shall remit $2.50 for motor vehicles subject to vehicle emissions inspection to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§336.2, 336.105, 336.1111, and 336.1127; and new §336.739.

Background and Summary of the Factual Basis for the Proposed Rules

The purpose of this rulemaking is to implement Senate Bill (SB) 347, 83rd Texas Legislature, 2013, and its amendments to Texas Health and Safety Code (THSC), Chapter 401 (also known as the Texas Radiation Control Act (TRCA)) and to add non-substantive changes to rules to ensure the commission's continued compatibility with the United States Nuclear Regulatory Commission (NRC). This proposed rulemaking also creates new provisions in Chapter 336 for the compact waste disposal facility license holder who may accept nonparty compact waste for disposal at the facility only if it has been volume reduced.

Corresponding rulemaking is published in this issue of the *Texas Register* concerning 30 TAC Chapter 37, Financial Assurance.

Section by Section Discussion

§336.2, Definitions

The commission proposes to amend §336.2 to revise the definitions of "Perpetual care account" and "Radiation and Perpetual Care Account" to reflect the new name of the dedicated general revenue account created by SB 347. The definitions have been reorganized to keep them in alphabetical order and renumbered accordingly. The commission proposes to amend §336.2(139) to make a non-substantive revision to the definition of "Total effective dose equivalent (TEDE)" to conform to updated federal regulations by adding two sets of parentheses.

§336.105, Schedule of Fees for Other Licenses

The commission proposes to amend §336.105(h)(1) to reflect the new name of the dedicated general revenue account created by SB 347.

§336.739, Volume Reduction

The commission proposes new §336.739 to establish new restrictions on the disposal of low-level radioactive waste in Texas, that was generated outside of Texas or Vermont. Those restrictions require that any such waste to be disposed in Texas must have been volume reduced to a certain degree.

§336.1111, Special Requirements for a License Application for Source Material Recovery and By-product Material Disposal Facilities

The commission proposes to amend §336.1111(1)(H) regarding the application requirements for a new license for source material recovery (i.e., uranium mining) and by-product disposal facilities. Under the current rule, an applicant is required to submit a signed certification from the landowners on which radioactive substances are recovered, stored, processed or disposed to reflect the landowner's consent to that activity and to acknowledge that decommissioning of the licensed site is required even if the licensee fails to perform the required decommissioning. The purpose of this provision was to assure that landowners are fully informed of both on-going licensed activities involving radioactive substances on the property and future closure requirements. The landowner acknowledgement was not intended to provide landowner approval power of a proposed project or disrupt the ability of an applicant to prepare a complete application. In addition, changes in land ownership can complicate and delay an applicant's need for timely application development and processing. Arrangements between landowners and uranium miners regarding use of the property should be made in private agreements and not be made part of the commission's license application processing. Instead of requiring landowners' signatures and consent, the proposed amendment will require the applicant to provide notification to the landowners. The notification is in addition to any required public notice under 30 TAC Chapter 39 of the commission's rules. The proposed revisions to §336.1111(1)(H) require an applicant to submit proof of the effort to provide the landowners with notification by certified and regular United States mail that radioactive materials will be recovered, stored, processed or disposed on the property and that the decommissioning of the property may be required and performed on the licensed site even if the licensee is unable to per-

form the decommissioning. An applicant may be able to submit the required proof in a variety of ways, such as an affidavit from the person responsible for mailing the notification, proof of certified mail receipts, or a description of the efforts implemented to comply with the requirements that is included in the sworn application.

§336.1127, Long-term Care and Maintenance Requirements

The commission proposes to amend §336.1127(a) and (c) to reflect the new name of the dedicated general revenue account created by SB 347. The commission also proposes to amend §336.1127(c) to decrease the assumed annual real interest rate allowed for certain licensee's financial assurance in order to comply with new federal requirements.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer Division, has determined that for the first five-year period the proposed rules are in effect, no direct fiscal implications are anticipated for the agency or for other units of state or local government as a result of the administration or enforcement of the proposed rules. However, fiscal implications are anticipated for the state and units of local government in as much as the proposed rules relate to the passage of SB 347. In concurrent rulemaking, the commission is proposing provisions in Chapter 37 which would implement other provisions of SB 347. The fiscal implications for these amendments are discussed in the fiscal note for the Chapter 37 rulemaking.

The proposed rulemaking would implement portions of SB 347. SB 347 created a new account within the General Revenue Fund to be called the Environmental Radiation and Perpetual Care Account, for the use of the TCEQ to prevent or mitigate the adverse effects of radioactive substances and ensure protection of public health. Funds in the account could be used for the decontamination, decommissioning, stabilization, reclamation, maintenance, surveillance, control, storage, and disposal of radioactive substances for the protection of the public health and safety, and the environment. The account would consist of fees on licenses and registrations as well as revenues from the 20% surcharge on nonparty compact waste previously deposited into the Low Level Radioactive Waste Account 088. This surcharge would now be deposited into the newly-created Environmental Radiation and Perpetual Care Account instead of Account 088. However, as part of the legislature's funds consolidation efforts, through the passage of House Bill 6, 83rd Texas Legislature, 2013, the new account was abolished just after it was established. Fee revenue that was required by SB 347 to be deposited into the new Environmental Radiation and Perpetual Care Account is now going into the General Revenue Fund.

In anticipation of the re-creation of the Environmental Radiation and Perpetual Care Account by the 84th Texas Legislature, 2015, and the re-dedication of funds in the account for low-level radioactive site closure, post closure and corrective action activities, and to implement provisions of SB 347, the commission is proposing this rulemaking.

The proposed amendments to Chapter 336 would revise the definitions of "Perpetual care account" and "Radiation and Perpetual Care Account" to reflect the name of the dedicated general revenue account created by SB 347. The proposed rules would also make a non-substantive revision to the definition of "Total effective dose equivalent" to conform to updated federal regulations. The proposed rulemaking would amend the schedule of fees in §336.105(h)(1) to reflect the name of the dedicated general revenue account created by SB 347. No fiscal implications are anticipated from these proposed changes. This account was created and then abolished by the 83rd Texas Legislature, 2013, but it is assumed that the account will be re-created as TCEQ and the Texas Department of State Health Services (DSHS) each require their respective perpetual care accounts for the entities they regulate.

As required by SB 347, the proposed rules also require that waste generated outside of Texas or Vermont that is to be disposed of in Texas, must be volume reduced. The commission also proposes to amend §336.1127(c) to decrease the assumed annual real interest rate allowed for certain licensee's financial assurance in order to comply with new federal requirements. This proposed revision is not anticipated to have significant fiscal implications.

Because SB 347 increases the curie capacity of nonparty waste that may be disposed at the site to 275,000 curies per year, an increase in revenue was anticipated from the 20% surcharge fee on nonparty waste. This revenue was to be deposited to the credit of Environmental Radiation and Perpetual Care Account. The agency estimated that $4.6 million would be generated from the surcharge on nonparty waste per year. However, because this account was abolished, this anticipated revenue will now go into the General Revenue Fund. This will be in addition to the already estimated $4.6 million that is currently collected from the 20% surcharge fee.

SB 347 provided that beginning September 1, 2015, the license holder may only accept nonparty waste for disposal if the waste has been volume-reduced and the license holder collects a fee to support the compact commission. However, if volume reduction would change the waste classification to greater than Class C, volume reduction will not be required. Further, the license holder may not dispose of nonparty Class A waste unless it is containerized. The license holder may collect a fee and dispose of not more than the greater of 1.167 million curies of nonparty waste or an amount of nonparty waste equal to 30% of the initial licensed capacity of the facility. SB 347 sets the annual nonparty waste curie limit at 275,000 curies. The legislature may revise these limits based on the TCEQ's capacity study due in 2016.

SB 347 also requires TCEQ and DSHS to collect a 5% fee on the annual license cost for radioactive material licensees. The 5% fee and the transportation fee required in THSC, §401.052(d) collected by TCEQ were to be deposited into the Environmental Radiation and Perpetual Care Account. Further, SB 347 repeals the $500,000 cap on the 5% and transportation fees, and sets a new cap of $100 million (total for both the Radiation and Perpetual Care Account and the Environmental Radiation and Perpetual Care Account) and requires reinstatement of the fees if the combined balance of the funds is subsequently reduced to $50 million or less. SB 347 further provides that the 20% surcharge on disposing of nonparty low-level radioactive waste continues to be collected regardless of whether the cap is reached. SB 347 carves out two separate caps within the $100 million cap for both compact generators and the uranium industry. Compact generators retain the original $500,000 cap on the amount of the transportation fee they are required to pay. The cap for the 5% fee of the annual cost for licensees for the extraction, processing, or concentration of uranium or thorium from ore is set at $2 million and they are not required to pay the 5% fee until they begin operations.

Based on 2012 revenue from the annual license for the extraction, processing, or concentration of uranium or thorium from

ore, it is estimated that the 5% license surcharge will generate $50,000 per year in new revenue. It is estimated the $2 million cap will be reached in 40 years based on the 2012 revenue. This additional revenue was to be deposited to the credit of the Environmental Radiation and Perpetual

Care Account but will now be deposited into the General Revenue Fund.

The 5% surcharge for Compact Waste Disposal Facility License (CWF) and By-Product Licenses (BYP) will be collected until their cap is reached. As a result of raising the cap it is estimated that an additional $88,000 per year will be collected based on 2012 collected revenue from the 5% license surcharge on BYP and CWF. This additional revenue was to be deposited to the credit of the Environmental Radiation and Perpetual Care Account. It is projected that this fee will be suspended within three years as a result of cap being reached.

The total additional revenue deposited into the Environmental Radiation and Perpetual Care Account was estimated to be approximately $9.2 million per year based on the 275,000 curie capacity and the 5% license surcharges.

In addition, the revenue deposited into General Revenue from the 5% Gross Receipts Fee was projected to increase. It was assumed that receipts by the facility will increase by $22 million from the increase in non-party curie capacity to 275,000. This will correlate to an increase of $1.1 million per year from for the 5% Gross Receipts Fee beginning in 2015. Andrews County is estimated to collect an additional $1.1 million from additional 5% gross receipts as result of the increase in curie capacity to 275,000 per year. Due to the abolishment of the Environmental Radiation and Perpetual Care Account, it is estimated that an additional $9.2 million per year will be deposited into the General Revenue Fund.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be in compliance with state law and the potential for a dedicated account and funding for post closure and corrective action activities associated with the low-level radioactive waste disposal site, assuming the legislature re-creates the account.

No direct fiscal implications are anticipated for individuals as a result of the proposed rulemaking. Any additional costs to businesses are an indirect result of this rulemaking and a direct result of the passage of SB 347.

It is assumed that receipts by the low-level radioactive waste facility will increase by $22 million from the increase in non-party curie capacity to 275,000. All radioactive material licensees will be required to pay a 5% fee of their annual license cost. At this time, TCEQ has 14 radioactive material licenses issued to 11 companies. Costs from the 5% surcharge on licenses is estimated to be approximately $138,000 for the first three years the rules are in effect as the surcharge for CWF and BYP is expected to reach its cap. The remaining two years of the five-year period would see an increase in costs of $50,000 each year for the annual license costs for the extraction, processing, or concentration of uranium or thorium from ore. Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. There are an estimated six small or micro-businesses that may be subject to the 5% surcharge on licenses. This surcharge is not a direct result of this rulemaking but rather a result of the passage of SB 347.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to implement state law and therefore are consistent with the health, safety, or environmental and economic welfare of the state.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission proposes the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. A "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 proposed rulemaking action implements legislative requirements in SB 347 regarding funding and subject to appropriation by the legislature of the Environmental Radiation and Perpetual Care Account. The proposed rulemaking action also implements the option for the low-level radioactive waste disposal compact waste facility license holder to accept non-party compact waste for disposal only if it is volume-reduced as provided by commission rule and subject to the license holder's surcharge and may be subject to a commission fee. The fees and surcharge if collected at all will be deposited into the Environmental Radiation and Perpetual Care Account. The proposal to Chapter 336 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, because financial assurance and this fund was already required for these licensing programs. The proposed rulemaking only changes the name for the fund that is administered by the commission and the commission will only be implementing an appropriation of the state budget from the legislature following an order from the Texas Comptroller of Public Accounts. While there could be new costs associated with obtaining a financial assurance mechanism that meets the requirements of the proposed rules, the commission does not expect that the costs to adversely affect the economy, productivity, or competition in a material way.

Furthermore, the proposed rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by

federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency.

THSC, Chapter 401, authorizes the commission to regulate the disposal of most radioactive substances in Texas. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. In addition, Texas is an "Agreement State" authorized by the NRC to administer a radiation control program under the Atomic Energy Act of 1954, as amended (Atomic Energy Act). The proposed rules are compatible with federal law.

The proposed rules do not exceed an express requirement of state law. THSC, Chapter 401, establishes general requirements, including requirements for public notices, for the licensing and disposal of radioactive substances, source material recovery, and commercial radioactive substances storage and processing. The purpose of the rulemaking is to implement statutory requirements consistent with recent amendments to THSC, Chapter 401, as provided in SB 347.

The proposed rules are compatible with a requirement of a delegation agreement or contract between the state and an agency of the federal government. Texas has been designated as an "Agreement State" by the NRC under the authority of the Atomic Energy Act. The Atomic Energy Act requires that the NRC find that the state radiation control program is compatible with the NRC requirements for the regulation of radioactive materials and is adequate to protect health and safety. Under the 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, NRC requirements must be implemented to maintain a compatible state program for protection against hazards of radiation. The proposed rules are compatible with the NRC requirements and the requirements for retaining status as an "Agreement State." This rulemaking is proposed under the specific authority of THSC, Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether the Private Real Property Rights Preservation Act, Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment indicates that the Private Real Property Rights Preservation Act does not apply to this proposed rulemaking because these rules implement SB 1604, 80th Texas Legislature, 2007, transferring certain regulatory responsibilities from DSHS to the commission and is an action reasonably taken to fulfill an obligation mandated by federal law. Financial assurance is required for these licensing programs under the NRC's requirements.

Nevertheless, the commission further evaluated this proposed rulemaking and performed a preliminary assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of this proposed rulemaking is to implement changes to the TRCA required by SB 347, for the deposit of funds into the Environmental Radiation and Perpetual Care Account. The proposed rule amendments to Chapter 336 would require nonparty compact waste, if eligible, for disposal at the low-level radioactive waste compact disposal facility by the license holder to be volume reduced by a factor of three subject to proposed volume reduction rules and a surcharge collected by the license holder. The surcharge, if collected, will be deposited to the credit of the Environmental Radiation and Perpetual Care Account.

Promulgation and enforcement of this proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. The proposed rules do not affect a landowner's rights in private real property because this rulemaking action does not constitutionally burden, nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program. Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on January 13, 2015, at 10:00 a.m., in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-056-037-WS. The comment period closes on January 20, 2015. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For

further information, please contact Bobby Janecka, Radioactive Material Licensing Section, (512) 239-6415.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §336.2

Statutory Authority

The amendment is proposed under the specific authority of Texas Health and Safety Code (THSC), Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. The amendment is also proposed under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under TWC and other laws of the state. The amendment is proposed to implement Senate Bill 347, 83rd Texas Legislature, 2013, and its amendments to THSC, Chapter 401 and to add nonsubstantive changes to rules to ensure the commission's continued compatibility with the United States Nuclear Regulatory Commission.

§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 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 Table I of §336.359(d) [~~§336.359, Appendix B, Table I, Column 1,~~] 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); 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) Air-purifying respirator--A respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

(9) 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(d)[~~, Appendix B,~~] 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).

(10) 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.

(11) Assigned protection factor (APF)--The expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration can be estimated by dividing the ambient airborne concentration by the APF.

(12) Atmosphere-supplying respirator--A respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.

(13) 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 State Health Services, NRC, or an Agreement State.

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

(15) 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.

(16) 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;

(B) The tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from ore pro-

cessed 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;

(C) Any discrete source of radium-226 that is produced, extracted, or converted after extraction, for use for a commercial, medical, or research activity;

(D) Any material that has been made radioactive by use of a particle accelerator, and is produced, extracted, or converted for use for a commercial, medical, or research activity; and

(E) Any discrete source of naturally occurring radioactive material, other than source material, that is extracted or converted after extraction for use in a commercial, medical, or research activity and that the NRC, in consultation with the Administrator of the United States Environmental Protection Agency (EPA), the United States Secretary of Energy, the United States Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security.

(17) CFR--Code of Federal Regulations.

(18) 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.

(19) 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.

(20) Committed dose equivalent ($H_{T,50}$) (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.

(21) Committed effective dose equivalent ($H_{E,50}$) (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.

(22) Compact--The Texas Low-Level Radioactive Waste Disposal Compact established under Texas Health and Safety Code, §403.006 and Texas Low-Level Radioactive Waste Disposal Compact Consent Act, Public Law Number 105-236 (1998).

(23) Compact waste--Low-level radioactive waste that:

(A) is generated in a host state or a party state; or

(B) is not generated in a host state or a party state, but has been approved for importation to this state by the compact commission under §3.05 of the compact established under Texas Health and Safety Code, §403.006.

(24) Compact waste disposal facility--The low-level radioactive waste land disposal facility licensed by the commission under Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) for the disposal of compact waste.

(25) Constraint (dose constraint)--A value above which specified licensee actions are required.

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

(27) Curie (Ci)--See §336.4 of this title (relating to Units of Radioactivity).

(28) Declared pregnant woman--A woman who has voluntarily informed the licensee, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

(29) 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.

(30) 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).

(31) Demand respirator--An atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

(32) 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.

(33) 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(d)[~~, Appendix B,~~] 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).

(34) 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 5 rems (0.05 sievert).

(35) Discrete source--A radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical, or research activities.

(36) 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.

(37) Disposable respirator--A respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of respirator are a disposable half-mask respirator or a disposable escape-only SCBA [~~self-contained breathing apparatus (SCBA)~~].

(38) 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.

(39) 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.

(40) 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).

(41) 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.

(42) 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.

(43) 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.

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

(45) 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.

(46) Environmental Radiation and Perpetual Care Account--An account in the general revenue fund established for the purposes specified in the Texas Health and Safety Code, §401.306.

(47) [~~(46)~~] Exposure--Being exposed to ionizing radiation or to radioactive material.

(48) [~~(47)~~] Exposure rate--The exposure per unit of time.

(49) [~~(48)~~] External dose--That portion of the dose equivalent received from any source of radiation outside the body.

(50) [~~(49)~~] 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.

(51) [~~(50)~~] Federal facility waste--Low-level radioactive waste that is the responsibility of the federal government under the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 United States Code, §2021b - 2021j). Excluded from this definition is low-level radioactive waste that is classified as greater than Class C in §336.362 of this title (relating to Appendix E. Classification and Characteristics of Low-Level Radioactive Waste).

(52) [~~(51)~~] Federal facility waste disposal facility--A low-level radioactive waste land disposal facility for the disposal of federal facility waste licensed under Subchapters H and J of this chapter (relating to Licensing Requirement of Near-Surface Land Disposal of Low-Level Radioactive Waste, and Federal Facility Waste Disposal Facility).

(53) [~~(52)~~] Filtering facepiece (dust mask)--A negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

(54) [~~(53)~~] Fit factor--A quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

(55) [~~(54)~~] Fit test--The use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

(56) [~~(55)~~] 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.

(57) [~~(56)~~] 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.

(58) [~~(57)~~] Gray (Gy)--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(59) [~~(58)~~] Hazardous waste--Hazardous waste as defined in §335.1 of this title (relating to Definitions).

(60) [~~(59)~~] Helmet--A rigid respiratory inlet covering that also provides head protection against impact and penetration.

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

(62) [~~(61)~~] Hood--A respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

(63) [~~(62)~~] Host state--A party state in which a compact facility is located or is being developed. The State of Texas is the host state under the Texas Low-Level Radioactive Waste Disposal Compact, §2.01, established under Texas Health and Safety Code, §403.006.

(64) [~~(63)~~] Individual--Any human being.

(65) [~~(64)~~] 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.

(66) [~~(65)~~] Individual monitoring devices--Devices designed to be worn by a single individual for the assessment of dose equivalent such as film badges, thermoluminescence dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.

(67) [~~(66)~~] Inhalation class--See "Class."

(68) [~~(67)~~] Inspection--An official examination and/or observation including, but not limited to, records, tests, surveys, and mon-

itoring to determine compliance with the Texas Radiation Control Act (TRCA) and rules, orders, and license conditions of the commission.

(69) [~~(68)~~] Internal dose--That portion of the dose equivalent received from radioactive material taken into the body.

(70) [~~(69)~~] 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 FR 43421) (relating to Definitions - high-level radioactive wastes in geologic repositories) is not considered a "land disposal facility."

(71) [~~(70)~~] Lens dose equivalent (LDE)--The external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm^2).

(72) [~~(71)~~] License--See "Specific license."

(73) [~~(72)~~] Licensed material--Radioactive material received, possessed, used, processed, transferred, or disposed of under a license issued by the commission.

(74) [~~(73)~~] Licensee--Any person who holds a license issued by the commission in accordance with the Texas Health and Safety Code, Chapter 401 (Radioactive Materials and Other Sources of Radiation) 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."

(75) [~~(74)~~] 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.

(76) [~~(75)~~] Loose-fitting facepiece--A respiratory inlet covering that is designed to form a partial seal with the face.

(77) [~~(76)~~] 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.

(78) [~~(77)~~] 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 State Health Services 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 in this section;

(iv) byproduct material as defined by paragraph (16)(B) - (E) 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.

(79) [~~(78)~~] Lung class--See "Class."

(80) [~~(79)~~] Member of the public--Any individual except when that individual is receiving an occupational dose.

(81) [~~(80)~~] Minor--An individual less than 18 years of age.

(82) [~~(81)~~] Mixed waste--A combination of hazardous waste, as defined in §335.1 of this title (relating to Definitions) and low-level radioactive waste. The term includes compact waste and federal facility waste containing hazardous waste.

(83) [~~(82)~~] 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.

(84) [~~(83)~~] Nationally tracked source--A sealed source containing a quantity equal to or greater than Category 1 or Category 2 levels of any radioactive material listed in §336.351 of this title (relating to Reports of Transactions Involving Nationally Tracked Sources). In this context a sealed source is defined as radioactive material that is sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control. It does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet. Category 1 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 2 threshold but less than the Category 1 threshold.

(85) [~~(84)~~] Naturally occurring or accelerator-produced radioactive material (NARM)--Any naturally occurring or accelerator-produced radioactive material except source material or special nuclear material.

(86) [~~(85)~~] 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 State Health Services adopted under Texas Health and Safety Code, §401.106.

(87) [~~(86)~~] 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.

(88) [~~(87)~~] Negative pressure respirator (tight fitting)--A respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

(89) [~~(88)~~] 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.

(90) [~~(89)~~] 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.

(91) [~~(90)~~] Oil and gas naturally occurring radioactive material (NORM) waste--NORM [~~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.

(92) [~~(91)~~] 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.

(93) [~~(92)~~] Particle accelerator--Any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and discharging the resultant particulate or other associated radiation at energies usually in excess of 1 million electron volts (MeV).

(94) [~~(93)~~] Party state--Any state that has become a party to the compact in accordance with Article VII of the Texas Low-Level Radioactive Waste Disposal Compact, established under Texas Health and Safety Code, §403.006.

(95) [~~(94)~~] Perpetual care account--The Environmental Radiation and Perpetual Care Account [~~radiation and perpetual care account~~] as defined in this section.

(96) [~~(95)~~] Personnel monitoring equipment--See "Individual monitoring devices."

(97) [~~(96)~~] Planned special exposure--An infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

(98) [~~(97)~~] Positive pressure respirator--A respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

(99) [~~(98)~~] Powered air-purifying respirator (PAPR)--An air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

(100) [~~(99)~~] Pressure demand respirator--A positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

(101) [~~(100)~~] 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.

(102) [~~(101)~~] 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.

(103) [~~(102)~~] Qualitative fit test (QLFT)--A pass/fail test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

(104) [~~(103)~~] Quality factor (Q)--The modifying factor listed in Table I or II of §336.3(c) or (d) of this title (relating to Units of Radiation Exposure and Dose) that is used to derive dose equivalent from absorbed dose.

(105) [~~(104)~~] Quantitative fit test (QNFT)--An assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

(106) [~~(105)~~] 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.

(107) [~~(106)~~] Rad--See §336.3 of this title (relating to Radiation Exposure and Dose).

(108) [~~(107)~~] 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.

~~[(108) Radiation and Perpetual Care Account--An account in the general revenue fund established for the purposes specified in the Texas Health and Safety Code, §401.305.]~~

(109) 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.

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

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

(112) 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.

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

(114) Radiobioassay--See "Bioassay."

(115) 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."

(116) Rem--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(117) 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.

(118) 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.

(119) 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.

(120) Roentgen (R)--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(121) 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.

(122) 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.

(123) Self-contained breathing apparatus (SCBA)--An atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

(124) Shallow-dose equivalent (H_s) (which applies to the external exposure of the skin of the whole body or the skin of an extremity)--The dose equivalent at a tissue depth of 0.007 centimeter (seven milligrams/square centimeter).

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

(126) Sievert (Sv)--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(127) Site boundary--That line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee.

(128) 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.

(129) 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 FR 50264) (Transportation of License Material).

(130) 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.

(131) 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 in this paragraph [~~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.

(132) 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."

(133) State--The State of Texas.

(134) 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.

(135) Supplied-air respirator (SAR) or airline respirator--An atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

(136) 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.

(137) 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.

(138) Tight-fitting facepiece--A respiratory inlet covering that forms a complete seal with the face.

(139) Total effective dose equivalent (TEDE)--The sum of the effective dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

(140) 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).

(141) 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.

(142) 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 A2 for normal form radioactive material, where A1 and A2 are given in or shall be determined by procedures in Appendix A to 10 CFR Part 71 as amended through September 28, 1995 (60 FR 50264) (Packaging and Transportation of Radioactive Material).

(143) Type B quantity (for packaging)--A quantity of radioactive material greater than a Type A quantity.

(144) Unrefined and unprocessed ore--Ore in its natural form before any processing, such as grinding, roasting, beneficiating, or refining.

(145) Unrestricted area--Any area that is not a restricted area.

(146) User seal check (fit check)--An action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamyl acetate check.

(147) Very high radiation area--An area, accessible to individuals, in which radiation levels from radiation sources external to the body 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 one meter from any surface that the radiation penetrates.

(148) Violation--An infringement of any provision of the TRCA [~~Texas Radiation Control Act (TRCA)~~] or of any rule, order, or license condition of the commission issued under the TRCA or this chapter.

(149) Waste--Low-level radioactive wastes containing source, special nuclear, or byproduct material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in paragraph (16)(B) - (E) of this section.

(150) Week--Seven consecutive days starting on Sunday.

(151) 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(151) (No change.)

(152) Whole body--For purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

(153) Worker--An individual engaged in activities under a license issued by the commission and controlled by a licensee, but does not include the licensee.

(154) 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 x 10^5 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.

(155) 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).

(156) 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.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6812

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SUBCHAPTER B RADIOACTIVE SUBSTANCE FEES

30 TAC §336.105

Statutory Authority

The amendment is proposed under the specific authority of Texas Health and Safety Code (THSC), Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. The amendment is also proposed under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under TWC and other laws of the state. The amendment is proposed to implement Senate Bill 347, 83rd Texas Legislature, 2013, and its amendments to THSC, Chapter 401 and to add nonsubstantive changes to rules to ensure the commission's continued compatibility with the United States Nuclear Regulatory Commission.

§336.105. Schedule of Fees for Other Licenses.

(a) Each application for a license under Subchapter F of this chapter (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), Subchapter G of this chapter (relating to Decommissioning Standards), Subchapter K of this chapter (relating to Commercial Disposal of Naturally Occurring Radioactive Material Waste from Public Water Systems), Subchapter L of this chapter (relating to Licensing of Source Material Recovery and By-product Material Disposal Facilities), or Subchapter M of this chapter (relating to Licensing of Radioactive Substances Processing and Storage Facilities) must be accompanied by an application fee as follows:

(1) facilities regulated under Subchapter F of this chapter: $50,000;

(2) facilities regulated under Subchapter G of this chapter: $10,000;

(3) facilities regulated under Subchapter K of this chapter: $50,000;

(4) facilities regulated under Subchapter L of this chapter: $463,096 for conventional mining; $322,633 for in situ mining; $325,910 for heap leach; and $374,729 for disposal only; or

(A) if the application fee is not sufficient to cover costs incurred by the commission, then the applicant shall submit a supplemental fee to recover the actual costs incurred by the commission for review of the application and any hearings associated with an application for commercial by-product material disposal under Subchapter L of this chapter in accordance with Texas Health and Safety Code, §401.301(g);

(B) the executive director shall invoice for the amount of the costs incurred quarterly. Payment shall be made within 30 days following the date of the invoice;

(5) facilities regulated under Subchapter M of this chapter: $3,830 for Waste Processing - Class I Exempt; $39,959 for Waste Processing - Class I; $94,661 for Waste Processing - Class II; and $273,800 for Waste Processing - Class III.

(b) An annual license fee shall be paid for each license issued under Subchapters F, G, K, L, and M [~~Subchapter F, Subchapter G, Subchapter K, Subchapter L, and Subchapter M~~] of this chapter. The amount of each annual fee is as follows:

(1) facilities regulated under Subchapter F of this chapter: $25,000;

(2) facilities regulated under Subchapter G of this chapter: $8,400;

(3) facilities regulated under Subchapter K of this chapter: $25,000;

(4) facilities regulated under Subchapter L of this chapter that are operational: $60,929.50; or

(A) if the annual fee is not sufficient to cover costs incurred by the commission, a holder of a license for commercial by-product material disposal issued under Subchapter L of this chapter shall submit a supplemental license fee sufficient to recover the actual costs incurred by the commission. This fee shall recover for the state the actual expenses arising from the regulatory activities associated with the license in accordance with Texas Health and Safety Code, §401.412(d);

(B) the executive director shall invoice for the amount of the costs incurred quarterly. Payment shall be made within 30 days following the date of the invoice;

(5) facilities regulated under Subchapter L of this chapter that are in closure: $60,929.50;

(6) facilities regulated under Subchapter L of this chapter that are in post-closure: $52,011.50 for conventional mining; $26,006 for in situ mining; and $52,011.50 for disposal only;

(7) facilities regulated under Subchapter L of this chapter, if additional noncontiguous source material recovery facility sites are authorized under the same license, the annual fee shall be increased by 25% for each additional site and 50% for sites in closure;

(8) facilities regulated under Subchapter L of this chapter, if an authorization for disposal of by-product material is added to a license, the annual fee shall be increased by 25%;

(9) facilities regulated under Subchapter L of this chapter, the following one-time fees apply if added after an environmental assessment has been completed on a facility:

(A) $28,658 for in situ wellfield on noncontiguous property;

(B) $71,651 for in situ satellite;

(C) $11,235 for wellfield on contiguous property;

(D) $50,756 for non-vacuum dryer; or

(E) $71,651 for disposal (including processing, if applicable) of by-product material; or

(10) facilities regulated under Subchapter M of this chapter: $3,830 for Waste Processing - Class I Exempt; $39,959 for Waste Processing - Class I; $94,661 for Waste Processing - Class II; and $273,800 for Waste Processing - Class III.

(c) An application for a major amendment of a license issued under Subchapter F, G, K, L, or M [~~Subchapter F, Subchapter G, Subchapter K, Subchapter L, or Subchapter M~~] of this chapter must be accompanied by an application fee of $10,000.

(d) An application for renewal of a license issued under Subchapter F, G, K, L, or M [~~Subchapter F, Subchapter G, Subchapter K, Subchapter L, or Subchapter M~~] of this chapter must be accompanied by an application fee of $35,000.

(e) Upon permanent cessation of all disposal activities and approval of the final decommissioning plan, holders of licenses issued under Subchapter F, K, L, or M [~~Subchapter F, Subchapter K, Subchapter L, or Subchapter M~~] of this chapter shall use the applicable fee schedule for subsections (b) and (c) of this section.

(f) For any application for a license issued under this chapter, the commission may assess and collect additional fees from the applicant to recover costs. Recoverable costs include costs incurred by the commission for administrative review, technical review, and hearings associated with the application. The executive director shall send an invoice for the amount of the costs incurred during the period September 1 through August 31 of each year. Payment shall be made within 30 days following the date of the invoice.

(g) If a licensee remitted a biennial licensing fee to the Texas Department of State Health Services during the one year period prior to June 17, 2007, the licensee is not subject to an annual fee under subsection (b) of this section until the expiration of the second year for which the biennial fee was paid.

(h) The commission may charge an additional 5% of annual fee assessed under subsection (b) of this section and §336.103 of this title (relating to Schedule of Fees for Subchapter H Licenses). The fee is non-refundable and will be deposited to the perpetual care account.

(1) The fees collected by the agency in accordance with this subsection shall be deposited to the credit of the Environmental Radiation and Perpetual Care Account, until the fees collectively total $500,000.

(2) If the balance of fees collected in accordance with this subsection is subsequently reduced to $350,000 or less, the agency shall reinstitute assessment of the fee until the balance reaches $500,000.

(i) The holder of a license authorizing disposal of a radioactive substance from other persons shall remit to the commission 5% of the holder's gross receipts received from disposal operations under a license. Payment shall be made within 30 days of the end of each quarter. The end of each quarter is the last day of the months of November,

February, May, and August. This subsection does not apply to the disposal of compact waste or federal facility waste.

(j) The holder of a license authorizing disposal of a radioactive substance from other persons shall remit directly to the host county 5% of the gross receipts disposal operations under a license as required in Texas Health and Safety Code, §401.271(2). Payment shall be made within 30 days of the end of each quarter. The end of each quarter is the last day of the months of November, February, May, and August. This subsection does not apply to the disposal of compact waste or federal facility waste.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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

30 TAC §336.739

Statutory Authority

The new section is proposed under the specific authority of Texas Health and Safety Code (THSC), Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. The new section is also proposed under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under TWC and other laws of the state. The new section is proposed to implement Senate Bill 347, 83rd Texas Legislature, 2013, and its amendments to THSC, Chapter 401.

§336.739. Volume Reduction.

(a) Beginning September 1, 2015, a licensee may not dispose of low-level radioactive waste, other than party state compact waste, at the Compact Waste Disposal Facility, unless the generator of that waste certifies that the waste has been volume-reduced by at least a factor of three, or less to the greatest extent possible if it is not technically feasible to reduce it by a factor of three, provided that:

(1) volume reduction of that waste does not result in a change of waste classification to a class higher than Class C;

(2) volume reduction does not cause concentrations of radioactivity of that waste to exceed concentration levels, as determined by the executive director; and

(3) at least two unaffiliated commercial radioactive waste processors are licensed companies in operation in the United States and offer low-level radioactive waste volume reduction for that waste.

(b) Wastes that are exempt from these volume reduction requirements include:

(1) irradiated hardware;

(2) solid forms such as non-compactible metals or monoliths;

(3) soils and demolition debris;

(4) sealed sources; and

(5) other waste, as determined by the executive director on a case-by-case basis.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER L. LICENSING OF SOURCE MATERIAL RECOVERY AND BY-PRODUCT MATERIAL DISPOSAL FACILITIES

30 TAC §336.1111, §336.1127

Statutory Authority

The amendments are proposed under the specific authority of Texas Health and Safety Code (THSC), Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. The amendments are also proposed under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under TWC and other laws of the state. The proposed amendments implement Senate Bill 347, 83rd Texas Legislature, 2013, and its amendments to THSC, Chapter 401 and to add nonsubstantive changes to rules to ensure the commission's continued compatibility with the United States Nuclear Regulatory Commission and implement THSC, §401.2625, regarding the commission's authority to grant licenses for source material recovery and by-product disposal.

§336.1111. Special Requirements for a License Application for Source Material Recovery and By-product Material Disposal Facilities.

In addition to the requirements in §336.1109 of this title (relating to General Requirements for the Issuance of Specific Licenses), a license may be issued if the applicant submits the items in paragraph (1) of this section for agency approval and meets the conditions in paragraphs (2) and (3) of this section.

(1) An application for a license must include the following:

(A) for new licenses, an environmental report that includes the results of a one-year preoperational monitoring program and for renewal of licenses, an environmental report containing the results of the operational monitoring program. Both must also include the following:

(i) description of the proposed project or action;

(ii) area/site characteristics including ecology, geology, topography, hydrology, meteorology, historical and cultural landmarks, and archaeology;

(iii) radiological and nonradiological impacts of the proposed project or action, including waterway and groundwater impacts and any long-term impacts;

(iv) environmental effects of accidents;

(v) by-product material disposal, decommissioning, decontamination, and reclamation and impacts of these activities; and

(vi) site and project alternative;

(B) a closure plan for decontamination, decommissioning, restoration, and reclamation of buildings and the site to levels that would allow unrestricted use and for reclamation of the by-product material disposal areas in accordance with the technical requirements of §336.1129 of this title (relating to Technical Requirements);

(C) proposal of an acceptable form and amount of financial security consistent with the requirements of §336.1125 of this title (relating to Financial Assurance [~~Security~~] Requirements);

(D) procedures describing the means employed to meet the requirements of §336.1113(1) and (2) of this title (relating to Specific Terms and Conditions of Licenses) and §336.1129(o) of this title during the operational phase of any project;

(E) specifications for the emissions control and disposition of the by-product material; [~~and~~]

(F) for disposal of by-product material received from others, information on the chemical and radioactive characteristics of the wastes to be received, detailed procedures for receiving and documenting incoming waste shipments, and detailed waste acceptance criteria;[~~.~~]

(G) an adequate operating, radiation safety, and emergency procedures manual; and

(H) for applications for a new license or applications for license amendments to expand the licensed site, proof of mailed notification to the owner or owners of the real property on which radioactive substances are recovered, stored, processed or disposed. The application for a new license must demonstrate that the owner or owners of the real property were sent by certified and regular United States mail, notification from the applicant stating that: [~~a signed certification from the owner or owners of the real property on which radioactive substances are recovered, stored, processed, or disposed acknowledging that:~~]

(i) radioactive substances will be [~~are~~] recovered, stored, processed or disposed on the property [~~with the consent of the property owner or owners~~]; and

(ii) decommissioning by the agency, a surety, or as directed by order may be required and performed on [~~of~~] the licensed site even if the [~~may be required even if the applicant or~~] licensee is unable or fails to decommission the licensed site as required by a license, rule or order of the commission.

(2) Except as provided in this section, the applicant shall not commence construction at the site until the agency has issued the license. Commencement of construction prior to issuance of the license shall be grounds for denial of a license. For an application for a new license to dispose of by-product material that was filed with the Texas Department of State Health Services on or before January 1, 2007, the applicant may commence construction as provided in §336.1135 of this title (relating to Construction Activities), at the applicant's own risk, upon the executive director's issuance of the Environmental Analysis provided under §281.21(f) of this title (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance History).

(3) An application for a license must be submitted according to the applicable requirements of the Texas Engineering Practice Act, the Texas Geoscience Practice Act, and the Professional Land Surveying Practices Act.

§336.1127. Long-term Care and Maintenance Requirements.

(a) Unless otherwise provided by the agency, each licensee licensed in accordance with this part for disposal of by-product material shall make payments into the Environmental Radiation and Perpetual Care Account in amounts specified by the agency. The agency shall make such determinations on a case-by-case basis.

(b) The final disposition of by-product material should be such that the need for ongoing active maintenance is eliminated to the maximum extent practicable.

(c) A minimum charge of $250,000 (1978 dollars) or more, if determined by the agency, must be paid into the Environmental Radiation and Perpetual Care Account to cover the costs of long-term care and maintenance. The total charge must be paid prior to the termination of a license. With agency approval, the charge may be paid in installments. The total or unpaid portion of the charge must be covered during the term of the license by additional security meeting the requirements of §336.1125 of this title (relating to Financial Assurance [~~Security~~] Requirements). If site surveillance, control, or maintenance requirements at a particular site are determined, on the basis of a site-specific evaluation, to be significantly greater (for example, if fencing or monitoring is determined to be necessary), the agency may specify a higher charge. The total charge must be such that, with an assumed 1.0% [~~2.0%~~] annual real interest rate, the collected funds will yield interest in an amount sufficient to cover the annual costs of site care, surveillance, and where necessary, maintenance. Prior to actual payment, the total charge will be adjusted annually for inflation. The inflation rate to be used is that indicated by the change in the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics.

(d) The requirements of this section apply only to those sites whose ownership is subject to being transferred to the state or the federal government. The total amount of funds collected by the agency in accordance with this section must be transferred to the federal government if title and custody of the by-product material disposal site is transferred to the federal government upon termination of the license.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 20. TEXAS PROCUREMENT AND SUPPORT SERVICES

SUBCHAPTER G. CONTRACT PROCEDURES

34 TAC §20.384

The Comptroller of Public Accounts proposes an amendment to §20.384, concerning protests. This section is being amended to provide for determinations of protests involving the comptroller's Strategic Sourcing Division by the director of that division.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by streamlining the Strategic Sourcing Division's procedures with regard to vendor protests. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the amendments may be submitted to Chuks Amajor, Director, Strategic Sourcing, Texas Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

This amendment is proposed under Government Code, §2155.076 which requires the comptroller to adopt rules to provide for protest procedures for resolving vendor protests relating to purchasing issues.

This amendment implements Government Code, §2155.076.

§20.384. Protests.

(a) The following words and terms, when used in this section, shall have the following meaning unless the context clearly indicates otherwise.

(1) Comptroller's office--The Office of the Comptroller of Public Accounts[~~, an agency of the state~~].

(2) Chief clerk--Deputy [~~deputy~~] comptroller of the comptroller's office.

(3) Director--For protests relating to purchasing issues involving the Texas Procurement and Support Services Division of the comptroller's office (TPASS), the director of TPASS; or, for protests relating to purchasing issues involving the Strategic Sourcing Division [~~Texas Procurement and Support Services~~] of the comptroller's office (SS), the director of SS.

(4) General counsel--General [~~general~~] counsel of the comptroller's office.

(5) Interested parties--All vendors who have submitted bids, proposals or other expressions of interest for the provision of goods or services pursuant to a contract with TPASS or SS [~~Texas Procurement and Support Services of the comptroller's office~~].

(6) Using agency--A state agency, governmental entity, or other entity involved in the contract.

(b) Any actual or prospective bidder, offeror, or contractor who considers himself to have been aggrieved in connection with the solicitation, evaluation, or award of a contract by TPASS or SS [~~Texas Procurement and Support Services~~] may formally protest to the director of the applicable division [~~Texas Procurement and Support Services~~]. Such protests must be made in writing and received by the director [~~of Texas Procurement and Support Services~~] within 10 working days after the protesting party knows, or should have known, of the occurrence of the action that is protested. Formal protests must conform to the requirements of subsections (b) and (d) of this section, and shall be resolved through use of the procedures that are described in subsections (e) - (i) of this section. The protesting party must mail or deliver copies of the protest to the using agency and other interested parties.

(c) In the event of a timely protest under this section, the state shall not proceed further with the solicitation or award of the contract unless the chief clerk, after consultation with the director [~~of Texas Procurement and Support Services~~] and the using agency, makes a written determination that the contract must be awarded without delay, to protect the best interests of the state.

(d) A formal protest must be sworn and contain:

(1) a specific identification of the statutory or regulatory provision that the protesting party alleges has been violated;

(2) a specific description of each action by TPASS or SS, as applicable, [~~Texas Procurement and Support Services~~] that the protesting party alleges to be a violation of the statutory or regulatory provision that the protesting party has identified pursuant to paragraph (1) of this subsection;

(3) a precise statement of the relevant facts;

(4) a statement of any issues of law or fact that the protesting party contends must be resolved;

(5) a statement of the argument and authorities that the protesting party offers in support of the protest; and

(6) a statement that copies of the protest have been mailed or delivered to the using agency and all other identifiable interested parties.

(e) The director [~~of Texas Procurement and Support Services~~] may settle and resolve the dispute over the solicitation or award of a contract at any time before the matter is submitted on appeal to the general counsel. The director [~~of Texas Procurement and Support Services~~] may solicit written responses to the protest from other interested parties.

(f) If the protest is not resolved by mutual agreement, the director [~~of Texas Procurement and Support Services~~] shall issue a written determination that resolves the protest.

(1) If the director [~~of Texas Procurement and Support Services~~] determines that no violation of statutory or regulatory provisions has occurred, then the director [~~of Texas Procurement and Support Services~~] shall inform the protesting party, the using agency, and other interested parties by letter that sets forth the reasons for the determination.

Texas Commission on Environmental Quality

ORDER ADOPTING AMENDED AND NEW RULES

Docket No. 2014-1223-RUL

Rule Project No. 2013-056-037-WS

On May 13, 2015, the Texas Commission on Environmental Quality (Commission) adopted rules in 30 Texas Administrative Code (TAC) Chapter 37, concerning Financial Assurance, amended § 37.9045 and § 37.9050; and 30 TAC Chapter 336, concerning Radioactive Substance Rules, amended §§ 336.2, 336.105, 336.1111 and 336.1127 and new § 336.739. The proposed rules were published for comment in the December 5, 2014, issue of the *Texas Register* (39 TexReg 9463 and 9484, respectively).

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended and new rules are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with Texas Register requirements. The adopted rules and the preamble to the adopted rules are incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by Tex. Gov't Code Ann., Chapter 2001 (West 2008).

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

Date Issued:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

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Bryan W. Shaw, Ph.D., P.E., Chairman

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