

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** June 13, 2014

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

From: Brent Wade, Deputy Director
Office of Waste

Subject: Consideration of a Petition for Rulemaking

Docket No.: 2014-0709-RUL

Project No.: 2014-026-PET-NR

Who Submitted the Petition:

On May 16, 2014, the Texas Commission on Environmental Quality received a petition for rulemaking filed by Representative Lon Burnam, otherwise known as the "petitioner."

What the Petitioner Requests:

The petitioner requests that the commission modify 30 TAC §305.62 to require a major amendment process and environmental analysis report for specified major changes in the type, quantity, and concentration limits of radioactive waste accepted by Waste Control Specialists, LLC.

Recommended Action and Justification:

The Executive Director recommends denial of this petition because the criteria for a major amendment and environmental analysis are well established in statute and rule and already include opportunities for public input and analysis whenever there are significant changes in the type, quantity, and concentration limits of the radioactive waste under Texas Health and Safety Code (THSC), Chapter 401 and in 30 TAC Chapters 281, 305, and 336.

The rules regarding major amendments were promulgated pursuant to THSC, Chapter 401 and must be compatible with the United States Nuclear Regulatory Commission (NRC) requirements. In the most recent session, the Texas Legislature did not pass any bill relating to the process for major amendments or environmental analysis, and the NRC has recently examined the Texas rules for compatibility and found them satisfactory.

The petitioner proposes adding "quantity" to the changes of wastes to be received. Section 305.62(i)(1)(A) already requires a major amendment for changes to the type or concentration limits of the radioactive wastes received. The quantity of the waste is already limited by statutory formulas, which are detailed in THSC, §401.207. Therefore, the applicant could not submit a major amendment to change the quantity as only the legislature could revise the limits on curie volume and the capacity. The quantity of low level radioactive waste is also subject to review by the Texas Low Level Radioactive Waste Disposal Compact Commission. If quantity were to effect capacity or the size of the facility,

Commissioners

Page 2

June 13, 2014

Re: Docket No. 2014-0709-RUL

the current rules at §305.62(i)(1)(F) already trigger a major amendment if licensed area is to increase in terms of space.

The petitioner proposes requiring an environmental analysis for changes to type, quantity, and concentration limits of radioactive waste accepted at the site. An environmental and scientific analysis is already required for these requests and is required by statute at THSC, §401.114 and in 30 TAC §305.62(i)(1)(K), if the impact is significant or a hearing is pending. It is important to note that TCEQ staff comprises experts in engineering, geology and health physics, who are mindful of the implications of their review of an amendment application on human health and the environment. Every amendment application -- whether minor or major -- is subject to technical, scientific and environmental review whether or not a formal report is published.

Applicable Law:

- Texas Government Code, §2001.021, which establishes the procedures by which an interested person may petition a state agency for the adoption of a rule
- 30 TAC §20.15, which provides such procedures specific to the commission
- THSC, Chapter 401
- 30 TAC Chapters 281, 305, and 336

Agency contacts:

Charles Maguire, Director, (512) 239-5308, Radioactive Materials Division

Amie Richardson, Staff Attorney, (512) 239-2999

Derek Baxter, Texas Register Coordinator, (512) 239-2613

Attachment

Petition

Commissioners

Page 3

June 13, 2014

Re: Docket No. 2014-0709-RUL

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Tucker Royall
Pattie Burnett
Office of General Counsel
Charles Maguire
Derek Baxter