

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

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

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

Changes to implement HB 1172 are: (1) amending the definition of low-level radioactive waste to be compatible with the United States Nuclear Regulatory Commission's (NRC's) definition; (2) incorporating the TNRCC's new authority to exempt from application of a rule; (3) adding an exemption to continue or expand on-site low-level radioactive waste disposal licensed before September

9, 1989; and (4) adding exemptions from radioactive material licensing requirements for facilities participating in the Voluntary Cleanup Program or Superfund cleanups.

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

SECTION BY SECTION DISCUSSION

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

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

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

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

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

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

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

Section 37.9035 was amended to add a reference to §336.602, which applies to ancillary facilities at near-surface land disposal low-level radioactive waste facilities. The proposed amendment to add a

reference to Chapter 336, Subchapter G §336.602 is withdrawn for the same reasons given in the §37.9030 discussion. Also, from proposal to adoption, in the first line, the words “are defined” are corrected to “may be found” to be consistent with the wording in §37.9005.

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

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

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in that statute. “Major environmental rule” means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rules are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because there are no new requirements added. In addition, the adopted rules do not meet the applicability requirements of a “major environmental rule.” The adopted rules do not exceed a standard set by federal law, exceed an express requirement of state law, nor exceed a requirement of a

delegation agreement. The adoption is not promulgated solely under general authorities but rather under THSC, §401.412(d) and (f).

TAKINGS IMPACT ASSESSMENT

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

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

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

HEARING AND COMMENTERS

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

STATUTORY AUTHORITY

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

SUBCHAPTER S: FINANCIAL ASSURANCE FOR RADIOACTIVE MATERIAL

§§37.9001, 37.9005

§37.9001. Applicability.

This subchapter applies to an owner or operator, including a state or federal government owner or operator, required to provide evidence of financial assurance under Chapter 336 of this title (relating to Radioactive Substance Rules), except owners or operators of a facility licensed under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste). This subchapter establishes requirements and mechanisms for demonstrating financial assurance for closure and post closure.

§37.9005. Definitions.

Definitions for terms that appear throughout this subchapter may be found in this section, Subchapter A of this chapter (relating to General Financial Assurance Requirements), §336.2 of this title (relating to Definitions), and §336.602 of this title (relating to Definitions), except the following definitions shall apply for this subchapter.

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

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

(3) **Control and maintenance** - Shall be referenced as post closure.

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

(5) **Post Closure** - Shall be the same as control and maintenance as used in Chapter 336, Subchapter G of this title (relating to Decommissioning Standards).

(6) **Site** - Shall be used interchangeably with facility.

SUBCHAPTER T: FINANCIAL ASSURANCE FOR NEAR-SURFACE LAND

DISPOSAL OF LOW-LEVEL RADIOACTIVE WASTE

§§37.9030, 37.9035, 37.9045, 37.9055

STATUTORY AUTHORITY

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

§37.9030. Applicability.

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

§37.9035. Definitions.

Definitions for terms that appear throughout this subchapter may be found in Subchapter A of this chapter (relating to General Financial Assurance Requirements), §336.2 of this title (relating to

Definitions), and §336.702 of this title (relating to Definitions), except the following definitions shall apply for this subchapter.

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

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

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

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

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

§37.9045. Financial Assurance Requirements for Closure and Post Closure.

(a) An owner or operator subject to this subchapter shall establish financial assurance for the closure or post closure 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 or post closure. 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, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste).

(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 an acceptable replacement financial assurance within the required time, the financial assurance mechanism shall be automatically collected prior to its expiration.

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

§37.9055. Institutional Control Requirements.

The institutional control requirements of this chapter shall apply to owners or operators specified under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) whose ownership of the site is subject to being transferred to the state or federal government.