

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes 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.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The changes proposed to this chapter are part of a larger proposal 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 begun 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 are 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.

SECTION BY SECTION DISCUSSION

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

The title of the subchapter is proposed to be 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 is proposed to be 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).” Financial assurance requirements for near-surface land disposal low-level radioactive waste facilities will continue to be located in Chapter 37, Subchapter T.

Section 37.9005 is proposed to be 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 is proposed to be amended to add “Low-Level” to conform with HB 1172.

Section 37.9030 is proposed to be 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 the financial assurance requirements in this subchapter apply to decommissioning the ancillary surface facilities associated with a Subchapter H low-level radioactive waste facility per Title 10 Code of Federal Regulations Part 20.

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

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

Section 37.9055 is proposed to be amended to add “Low-Level” to conform with HB 1172.

FISCAL NOTE

Jeff Grymkoski, Director, Strategic Planning and Appropriations, has determined that for the first five-year period the proposed rules are in effect, there will be no significant fiscal implications for the commission or other units of state and local government as a result of administration or enforcement of the proposed amendments.

The proposed rules would amend financial assurance rules, implement certain provisions of HB 1172, 76th Legislature, 1999, (an Act relating to the definition of low-level radioactive waste) by incorporating the newly defined term “low-level radioactive waste” and by reflecting changes to references due to the reorganization of Chapter 336.

PUBLIC BENEFIT

Mr. Grymkoski has also determined that for each year of the first five years the proposed rules are in effect, the anticipated public benefit from enforcement and compliance with the proposed rules will be enhanced ability to clean up potential contamination due to clarifying and updating the radiation program financial assurance requirements.

Implementation of these rules are not anticipated to have an adverse economic affect on any person, business, or facility required to comply with the proposed rules because no new requirements are added, not already required by current state law or agency rules.

SMALL AND MICRO-BUSINESS IMPACT ANALYSES

No adverse economic effects are anticipated to any small businesses or micro-businesses as a result of implementing the proposed rules because no new requirements are added, not already required by current state law or agency rules.

The proposed rules would amend financial assurance rules, implement certain provisions of HB 1172, 76th Legislature, 1999, (an Act relating to the definition of low-level radioactive waste) by

incorporating the newly defined term “low-level radioactive waste” and by reflecting changes to references due to the reorganization of Chapter 336.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed 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 proposed 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 proposed rules do not meet the applicability requirements of a “major environmental rule.” The proposed 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 proposal 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 proposed rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposal is not subject to the CMP.

PUBLIC HEARING

A public hearing on this proposal will be held in Austin on July 6, 2000, at 10:00 a.m. in Building F, Room 2210 at the Texas Natural Resource Conservation Commission Complex, located at 12100 Park 35 Circle. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs, who are

planning to attend the hearing, should contact the Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3078 or faxed to (512) 239-4808.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 1999-057-336-WS. Comments must be received by 5:00 p.m., July 17, 2000. For further information or questions concerning this proposal, please contact Hygie Reynolds, Waste Permits Division, at (512) 239-6825.

STATUTORY AUTHORITY

The amendments are proposed 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.

These amendments implement THSC, Chapter 401, relating to Radioactive Materials and Other Sources of Radiation.

**SUBCHAPTER S: FINANCIAL ASSURANCE FOR [ALTERNATIVE METHODS OF
DISPOSAL OF] 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) [, Subchapter F of this title (relating to Licensing of Alternative Methods of Disposal of Radioactive Material)]. 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 [§336.502] of this title (relating to Definitions), except the following definitions shall apply for this subchapter.

(1)-(6) (No change.)

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 proposed 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.

These amendments implement THSC, Chapter 401, relating to Radioactive Materials and Other Sources of Radiation.

§37.9030. Applicability.

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

§37.9035. Definitions.

Definitions for terms that appear throughout this subchapter are defined in Subchapter A of this chapter (relating to General Financial Assurance Requirements), §336.2 of this title (relating to Definitions), §336.602 of this title (relating to Definitions), and §336.702 of this title (relating to Definitions), except the following definitions shall apply for this subchapter.

(1)-(5) (No change.)

§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)-(3) (No change.)

(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) (No change.)

(b) (No change.)

§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.