

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: December 16, 2011

Thru: Bridget Bohac, Chief Clerk
Mark R. Vickery, P.G., Executive Director

From: Brent Wade, Deputy Director
Office of Waste

Docket No.: 2011-0775-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 336, Radioactive Substance Rules
Radioactive Substance Rules Update
Rule Project No. 2011-011-336-WS

Background and reason(s) for the rulemaking:

Texas Health and Safety Code (THSC), §401.001 establishes that it is the policy of the state to institute and maintain a regulatory program for sources of radiation that provides for compatibility with federal standards and regulatory programs. This rulemaking revises the commission's radiation control rules to ensure compatibility with regulations promulgated by the United States Nuclear Regulatory Commission (NRC). The state must adopt compatible rules to maintain the status of Texas as an Agreement State authorized to administer a portion of the radiation control program under the Atomic Energy Act.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The rulemaking implements the following NRC rules:

NRC Order Imposing Increased Controls (70 FR 72128). Subsequent to the terrorist attacks of September 11, 2001, the NRC conducted an assessment of security risks posed by uncontrolled sources of radiation. On November 14, 2005, the NRC issued an order imposing requirements for the control of high-risk radioactive materials to prevent inadvertent and intentional unauthorized access. Each agreement state is required to issue legally binding requirements for licensees under state regulatory jurisdiction.

National Source Tracking System (71 FR 65685). Subsequent to the terrorist attacks of September 11, 2001, the NRC conducted a comprehensive review of nuclear material security requirements and established the National Source Tracking System to provide greater accountability and increased controls by licensees for certain tracked sources. These rules impose requirements for the reporting of information on the manufacture, transfer, receipt, disassembly, and disposal of nationally tracked sealed sources.

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Requirements for Expanded Definition of Byproduct Material (72 FR 55864, 72 FR 42672). The NRC adopted rules implementing changes established by Congress in the Energy Policy Act of 2005 regarding the regulation of byproduct material under the NRC's regulatory program. New categories of byproduct material under NRC authority include discrete sources of radium-226, accelerator produced radioactive material, and any discrete sources of naturally occurring radioactive materials that the NRC determines should be included under the NRC regulatory because it poses a similar threat as radium-226.

Occupational Dose Records, Labeling Containers, and the Total Effective Dose Equivalent (72 FR 68043, 72 FR 72233). The NRC conducted a review of regulatory requirements imposed on licensees and revised rules to remove unnecessarily burdensome record-keeping and reporting requirements for licensees. Although these rules reduce record-keeping and reporting requirements, the NRC explains that the rules do not change the level of protection for either the health and safety of workers or the public or for the environment.

The rulemaking also amends the fees charged for facilities regulated under Subchapter L of Chapter 336 (Licensing of Source Material Recovery and By-Product Material Disposal Facilities). The fee shall recover for the state the actual expenses arising from the regulatory activities associated with the license. The rulemaking also requires the executive director to submit invoices and collect payment on a quarterly basis for the recovery of the annual fee associated with a license for the commercial disposal of low-level radioactive waste.

The rulemaking also clarifies the requirements for license fees to fund the Radiation and Perpetual Care Account.

B.) Scope required by federal regulations or state statutes:

This rulemaking brings the TCEQ radiation control rules current with federal rules promulgated by the NRC and implements state statutes regarding cost recovery for radioactive material licenses and fees to fund the Radiation and Perpetual Care Account.

C.) Additional staff recommendations that are not required by federal rule or state statute:

None.

Statutory authority:

THSC, §401.011, Radiation Control Agency

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THSC, §401.051, Adoption of Rules and Guidelines

THSC, §401.103, Rules and Guidelines for Licensing and Registration

THSC, §401.104, Licensing and Registration Rules

THSC, §401.262, Management of Certain By-Product Material

THSC, §401.2625, Licensing Authority

THSC, §401.301, License and Registration Fees

THSC, §401.305, Radiation and Perpetual Care Account

THSC, §401.412, Commission Licensing Authority

Effect on the:

A.) Regulated community:

There will be an effect on members of the regulated community who are authorized to possess, store, process or dispose of radioactive material under a license issued by the commission. The effect and fiscal impact of adopting the new NRC rules is not expected to be significant. The rules do not create a group of affected persons who were not affected previously.

There may be a fiscal impact for licensees authorized for commercial dispose of by-product material. The annual license fee will change from \$60,929.50 to the actual expenses arising from the regulatory activities associated with the license. This could be an increase or decrease depending on the nature and extent of regulatory activities associated with the license in any given year. There is only one licensee currently authorized for commercial disposal of by-product material.

B.) Public:

There will be no effect on the public because the proposed rules only pertain to members of the regulated community.

C.) Agency programs:

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Office of Waste: Additional technical review of license applications may be necessary. Additional cost recovery efforts will be necessary for by-product material disposal licenses. No additional full-time employees (FTEs) are required.

Environmental Law Division: Additional support for the technical review of license applications may be necessary. No additional FTEs are required.

Office of Compliance and Enforcement: There will be additional rule requirements to inspect during investigations. No additional FTEs are required.

Stakeholder meetings:

A public hearing on the rules was held on August 30, 2011. It was determined that those that were present did not want to make comments on the record. Therefore, the public hearing was not formally opened for comment and a transcript was not prepared.

Public comment:

The comment period closed on September 6, 2011. The commission received comments from the NRC, the Office of Public Interest Council (OPIC) of the Texas Commission on Environmental Quality, the Uranium Committee of the Texas Mining & Reclamation Association (TMRA), and Waste Control Specialists, LLC (WCS).

Significant changes from proposal:

There were no substantive changes from proposal. Most of the changes made in response to public comments corrected clerical errors or were clarifying in nature.

Potential controversial concerns and legislative interest:

WCS commented that the rules should not provide for quarterly invoicing and payment of the annual fee and that the amount of the annual fee for a license for the commercial disposal of low-level radioactive waste should be established in rule. In response to these comments, the preamble suggests that these issues raised by WCS be taken up in a future rulemaking when the agency's expenses in regulating the entity become more predictable and the licensee's activities at the facility become routine.

Does this rulemaking affect any current policies or require development of new policies?

No.

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What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

Failure to amend Chapter 336 will leave the TCEQ rules inconsistent with federal requirements and state statutes.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: August 5, 2011
Anticipated Texas Register publication date: January 27, 2012
Anticipated effective date: February 2, 2012
Six-month Texas Register filing deadline: February 5, 2012

Agency contacts:

Susan Jablonski, Rule Project Manager, 239-6731, Radioactive Materials Division
Don Redmond, Staff Attorney, 239-0612
Michael Parrish, Texas Register Coordinator, 239-2548

Attachments

None

cc: Chief Clerk, 2 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Anne Idsal
Curtis Seaton
Ashley Morgan
Office of General Counsel
Susan Jablonski
Michael Parrish
Don Redmond