

SUBCHAPTER H : RADIOACTIVE SUBSTANCES AND MATERIALS
EMERGENCY ORDERS
§35.501, §35.502
Effective December 10, 1998

§35.501. Emergency Orders Relating to Radioactive Substances.

(a) When an emergency exists as a result of a matter under the commission's jurisdiction that requires immediate action to protect the public health or safety or the environment, the commission or executive director may issue an emergency order under Texas Water Code, §5.516, and Texas Health and Safety Code, §401.056.

(b) The commission or executive director may issue an emergency order directing any action or corrective measure needed to correct or remove the threat to public health or safety or the environment when the commission or executive director determines that radioactive substances under its jurisdiction threatens the public health or safety or the environment and that the licensee managing the radioactive substances is unable to remove the threat.

(c) An emergency order issued under this section takes effect immediately. A person to whom an emergency order is directed shall comply immediately with that order.

(d) The emergency order shall be delivered to the person to whom the order is directed by hand delivery or by certified mail, return receipt requested. Affidavit of personal service, proof of mailing to the proper address, or the receipt shall be conclusive evidence of service.

(e) If the commission or executive director issues the emergency order without notice or hearing, the commission shall provide the person to whom the order is directed an opportunity for a hearing on written request within 30 days of the date of the order. If a hearing is requested, notice of the hearing shall be given to the person to whom the order is directed by hand delivery or certified mail, return receipt requested, at least ten days before the hearing. A requested hearing shall be held not earlier than the 11th day and not later than the 20th day following the date of receipt of the hearing request.

(f) All provisions of the emergency order shall remain in full force and effect during the pendency of a hearing, unless otherwise altered by the commission. At the conclusion of the hearing and after the proposal for decision is made, the commission shall make a determination to affirm, modify, or revoke the emergency order and may modify, revoke, or suspend the license based on the determination made.

(g) The commission shall use the financial assurance mechanism provided by a licensee to pay the costs of actions and corrective measures that are taken or that are to be taken under this section. The commission shall use this financial assurance mechanism under the procedure set out in Texas Health and Safety Code, Chapter 401.

(h) If the costs of actions and corrective measures require more funds than the financial assurance mechanism has provided, the commission shall request the attorney general to seek reimbursement from the licensee or person causing the threat.

(i) The commission shall seek reimbursement through a commission order or shall request the attorney general to file suit for reimbursement if the commission uses the funds provided by the licensee for security under Texas Health and Safety Code, Chapter 401, to pay for actions or corrective measures to remedy spills or contamination by radioactive material resulting from a violation of the Texas Radiation Control Act (TRCA), the rules of this chapter, or a license or order issued by the commission under the TRCA or this chapter.

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§35.502. Emergency Impoundment of Radioactive Material.

(a) In the event of an emergency, the commission or the executive director shall have the authority to impound or order the impoundment of radioactive material possessed by any person not equipped to observe or failing to observe the provisions of the Texas Radiation Control Act (TRCA), the rules of Chapter 336 of this title (relating to Radioactive Substance Rules), or a license or order issued by the commission under the TRCA or Chapter 336 of this title.

(b) As determined by the commission, the impounded radioactive material may be:

- (1) returned to a properly licensed owner who did not cause the emergency;
- (2) released as evidence to police or courts;
- (3) returned to a licensee after the emergency conditions have ceased and any compliance action is settled;
- (4) sold;
- (5) disposed of at an authorized disposal facility; or
- (6) otherwise appropriately transferred or disposed.

(c) If disposition of the impounded radioactive material is necessary to protect the public health and safety, no prior notice need be given the owner or possessor. If action is not necessary to protect the public health and safety, the commission shall give written notice to the owner and/or possessor of the intention to dispose of the material. Notice shall be given by personal service or certified mail, return receipt requested. The owner or possessor shall have 30 days from the date of personal service or mailing to make a written request for a hearing. If no hearing is requested within that time, the commission may take the proposed action.

(d) Upon disposition of impounded radioactive material, the commission may notify the owner and/or possessor of any expense the commission may have incurred during the impoundment and/or disposition and request reimbursement. If the amount is not paid within 60 days from the date of notice, the commission may request the attorney general to file suit against the owner or possessor for the amount requested. If the owner or possessor desires to contest the amount of this charge, he may request a hearing.

(e) If the commission determines from the facts available that impounded radioactive material is abandoned, with no reasonable evidence showing the owner or possessor, the commission may make such disposition of the material as it sees fit.

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