

The Texas Commission on Environmental Quality (commission) proposes amendments to §§336.1, 336.101, 336.103, 336.105, 336.107, 336.1105, 336.1109, 336.1113, 336.1125, and 336.1235. The commission also proposes new §§336.114, 336.208, 336.210, 336.1301, 336.1303, 336.1305, 336.1307, 336.1309, 336.1311, 336.1313, 336.1315, and 336.1317.

#### 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 commission's radiation control and underground injection control (UIC) rules. The purpose of this rulemaking is to implement the remaining portions of Senate Bill (SB) 1604, 80th Legislature, 2007, its amendments to Texas Health and Safety Code (THSC), Chapter 401 (also known as the Texas Radiation Control Act (TRCA)), and House Bill (HB) 3838, 80th Legislature, 2007, and HB 1567, 78th Legislature, 2003. This proposed rulemaking intends to incorporate new provisions for notice and contested case hearing opportunities related to Production Area Authorizations and UIC Area Permits, financial qualification review revisions, and new state fees on gross receipts associated with the radioactive waste disposal. HB 3838 specifically addresses the period between uranium exploration, which is regulated by the Railroad Commission of Texas (RRC), and permitting and licensing of in situ uranium mining, which is regulated by TCEQ. HB 3838 requires TCEQ to establish a registration program for exploration wells permitted by the RRC that are used for development of the UIC area permit application and the license application. HB 1567 requires the commission to adopt rules that establish fees for the disposal of low-level radioactive waste pursuant to the Texas Low-Level Radioactive Waste Disposal Compact. In response to a previous petition for rulemaking, the commission has also directed staff to review, seek stakeholder input on, and recommend revision of commission rules related to in situ uranium recovery. The proposed amendments to Chapter 336 establish the qualifications and duties of the radiation safety officer (RSO) and establish

requirements for emergency plans for responding to releases, establish application fees for radioactive materials licenses, establish fees for the disposal of low-level radioactive waste, and clarify requirements that apply to source material recovery and by-product disposal.

The commission encourages the submission of public comments, data, views, and arguments on these proposed rules from all interested persons. The commission encourages comments on new Subchapter N establishing rates to be charged for low-level radioactive waste disposal fees including methods for determining revenues, reasonable rate of return, and capital investments which are the pertinent issues in establishing a rate under THSC, §401.246. The commission also seeks comments regarding a contested case hearing before the State Office of Administrative Hearings to provide a proposal for decision to be used by the commission to establish the maximum disposal rates by rule, including comments on whether there should be an opportunity for a contested case hearing. The commission recognizes that the final rule may incorporate public comment that is a logical outgrowth of the published provisions.

Corresponding rulemaking is published in this issue of the *Texas Register* concerning 30 TAC Chapters 37, 39, 55, 305, and 331.

#### SECTION BY SECTION DISCUSSION

The commission proposes an amendment to §336.1 to correct typographical errors.

The commission proposes an amendment to §336.101(a) to include fees for commercial disposal of radioactive material, including fees for compact waste disposal as provided in THSC, §401.245. The commission also proposes to amend §336.101(b)(2) to spell out the acronym CFR.

The commission proposes revisions to establish various application fees for amendment and renewal of licenses under Chapter 336. The current rules do not address the applicable fee for all types of applications under Chapter 336. Under THSC, §401.301 and §401.412, the commission may assess and collect a fee for each application in an amount sufficient to recover reasonable costs to administer its authority under THSC, Chapter 401.

The commission proposes §336.103(d) to establish an application fee of \$50,000 for a major amendment of a license issued under Chapter 336, Subchapter H, Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste. The executive director of the commission determined that this application fee amount was sufficient to recover the cost to administer a major amendment of a license under Subchapter H.

The commission proposes §336.103(e) to establish an application fee of \$300,000 for renewal of a license issued under Subchapter H. The executive director of the commission determined that this application fee amount was sufficient to recover the cost to administer the renewal of a license under Subchapter H.

The commission proposes §336.103(f) to implement THSC, §401.2445, which requires a compact waste disposal facility license holder to remit to the commission 5% of the gross receipts from compact waste received at the compact waste disposal facility and any federal facility waste received at the federal facility waste disposal facility. Payments should be made within 30 days of the end of each quarter.

The commission proposes §336.103(g) to implement THSC, §401.244, which requires compact waste disposal facility license holder to remit directly to the host county 5% of the gross receipts from compact waste received at the compact waste disposal facility and any federal facility waste received at the federal facility waste disposal facility.

The commission proposes an amendment to §336.105(c) to establish an application fee of \$10,000 for major amendment of a license issued under Chapter 336, Subchapter L, Licensing of Source Material Recovery and By-Product Material Disposal Facilities, and Subchapter M, Licensing of Radioactive Substances Processing and Storage Facilities. The executive director of the commission determined that this application fee amount was sufficient to recover the cost to administer a major amendment of a license under Subchapter L.

The commission proposes an amendment to §336.105(d) to establish an application fee of \$35,000 for renewal of a license issued under Subchapters L and M. The executive director of the commission determined that this application fee amount was sufficient to recover the cost to administer the renewal of a license under Subchapters L and M.

The commission proposes an amendment to §336.105(e) to reference the applicable fee schedules for holders of licenses issued under Subchapters L and M, upon permanent cessation of all disposal activities and approval of the final decommissioning plan. The executive director of the commission determined that the current applicable fee schedules were appropriate for those licenses under Subchapters L and M to recover the administrative cost.

The commission proposes an amendment to §336.105(f) to implement THSC, §401.301(f) to provide for cost recovery for any application for a license issued under Chapter 336.

The commission proposes §336.105(h) to provide an additional 5% annual fee assessed under §336.105(b) to be deposited to the perpetual care account. This provision is proposed to implement THSC, §401.301(d).

The commission proposes §336.105(i) to implement THSC, §401.271(1), which requires the holder of a license authorizing disposal of a radioactive substance from other persons to remit to the commission 5% of the holder's gross receipts received from disposal operations under a license. The Comptroller's office requested the commission collect the 5% of the holder's gross receipts and deposit it into the General Revenue account.

The commission proposes §336.105(j) to implement THSC, §401.271(2), which requires the holder of a license authorizing disposal of a radioactive substance from other persons to remit directly to the host county 5% of the gross receipts. The remission to the host county under this subsection does not apply to disposal of low-level radioactive waste, neither compact waste nor federal facility waste.

The commission proposes an amendment to §336.107(a) to require that payment for fees shall be due on or before October 31st of each year. Section 336.107(b) is proposed to be amended to provide that annual fees may be prorated for a period less than 12 months to accommodate the due date established in §336.107(a).

The commission proposes new §336.114 to implement THSC, §401.302, which requires an annual fee from the operator of each nuclear reactor or other fixed nuclear facility in the state that uses special nuclear material. The amount of fees collected may not exceed the actual expenses that arise from emergency planning and implementation and environmental surveillance activities.

The commission proposes new §336.208 to include language for RSO qualifications and duties. This language is copied directly over from 25 TAC §289.202 and was inadvertently left out in the Phase I Rulemaking (Rule Project Number 2007-028-336-PR).

The commission proposes new §336.210 to include language for emergency plans. This language is copied directly over from 25 TAC §289.202 and was inadvertently left out in the Phase I Rulemaking.

The commission proposes an amendment to §336.1105 to clarify the definitions of "Surface Impoundments" and "Uranium Recovery"; adding definitions for "By-Product Material Disposal Cell," "By-Product Material Pond," "In situ leach," and "In situ recovery"; modifying and adding language to the definition of "Operation"; and adding definitions for "Reclamation" and "Restoration." These changes are made in an effort to clearly differentiate between conventional and in situ uranium recovery and to clarify reclamation and restoration which are decommissioning activities.

The commission proposes an amendment to §336.1109 to eliminate the language for RSO qualifications and refer to §336.208 for that information. This allows the consolidation of RSO requirements to one section in the regulations.

The commission proposes an amendment to §336.1113 by adding new paragraph (4) to require submission of written reports after certain spills or releases. This change ensures that the licensee reports on a spill and includes information about location, cause, corrective steps, and schedule for remediation.

The commission proposes an amendment to §336.1125 by replacing the terms "financial security" to "financial assurance," and "security arrangements" to "financial assurance mechanism." These proposed changes would ensure that they are consistent with the terminology used in Chapter 37, Financial Assurance. The commission also proposes an amendment to §336.1125 by adding the phrase, "injection of mining fluid into a production area" to the actions that are prohibited before the establishment of financial assurance mechanism and adding language that would require the licensee or applicant to calculate restoration financial assurance amount using certain data. This proposed change would ensure against possibly unsecured contamination events and ensuring that the licensee uses the correct data when calculating financial security for restoration.

The commission proposes §336.1125(d) - (i) to establish requirements for financial assurance, implementing the Texas Department of State Health Services' (Department) provisions in 25 TAC §289.260(m). The commission proposes these new subsections to provide that financial assurance mechanisms submitted to comply with the requirements of Subchapter L must meet the requirements of Chapter 37, Subchapter T. The commission's financial assurance requirements are consolidated in Chapter 37 and establish specific requirements for the type of financial assurance mechanisms and the wording for specific financial assurance instruments. Proposed subsection (i) provides that existing licenses must submit new financial assurance mechanisms to comply with the requirements of Subchapter L and the requirements of Chapter 37, Subchapter T by June 1, 2009. The commission believes that this

provides a suitable amount of time for licensees to make arrangements for submission of financial assurance mechanisms that are in compliance with commission requirements.

The commission proposes an amendment to §336.1235 to establish financial assurance requirements for facilities licensed under Subchapter M. Decommissioning and financial assurance for facilities licensed under Subchapter M are required under the provisions of Chapter 336, Subchapter G, Decommissioning Standards. Financial assurance mechanisms must be provided in accordance with Chapter 37, Subchapter T, Financial Assurance for Radioactive Substances and Aquifer Restoration. New licenses must provide acceptable financial assurance 60 days prior to receipt or possession of radioactive substances. Existing licensees authorized by the Department must submit new financial assurance mechanisms in favor of the commission by June 1, 2009. In addition, once financial assurance is established, a licensee must provide a cost estimate report annually to allow review of cost estimates for decommissioning and submit additional financial assurance to reflect any increase in the cost estimate.

The commission proposes new Subchapter N to establish fees for low-level radioactive waste disposal. The primary purpose of the proposed rulemaking is to implement HB 1567, 78th Legislature, 2003, SB 1604, 80th Legislature, 2007, and its amendments to THSC, Chapter 401, also known as the Texas Radiation Control Act.

The commission proposes new §336.1301 to establish the procedures the commission will use to determine the rates charged by the Texas Low-Level Radioactive Waste Disposal Compact.

The commission proposes new §336.1303 to establish definitions for Subchapter N. Section 336.1303 implements THSC, §401.246(b). The following definitions are consistent with the terms used by the Public Utility Commission of Texas under Texas Utilities Code, §§36.051, 36.052, and 36.053: capital investment, compact, compact waste, compact waste disposal facility, extraordinary volume, extraordinary volume adjustment, generator, gross receipts, inflation adjustment, licensee, maximum disposal rate, reasonable rate of return, relative hazard, revenue requirement, and volume adjustment.

The commission proposes new §336.1305 to implement the commission's jurisdiction to establish rates charged by the compact waste disposal license holder in accordance with THSC, §401.245(b).

The commission proposes new §336.1305(a) to provide that in establishing the rates, the commission ensures they are fair, just, reasonable, and sufficient. This provision is proposed to comply with THSC, §§401.245, 401.246, and 401.247.

The commission proposes new §336.1305(b) to provide methods by which the commission may arrive at the objective of prescribing and authorizing fair, just, reasonable, and sufficient rates. This provision is proposed to implement THSC, §401.246(b).

The commission proposes new §336.1305(c) to provide that the commission may refer a request for a contested case hearing to the State Office Administrative Hearings on the establishment of a rate under Subchapter N. This provision is proposed to implement THSC, §401.245.

The commission proposes new §336.1305(d) to provide that the commission holds audit authority over the licensee in pursuant to THSC, §401.272.

The commission proposes new §336.1305(e) to provide that the commission shall establish, by rule, the maximum disposal rate and schedule. This provision is proposed to implement THSC, §401.245.

The commission proposes new §336.1305(f) to provide that the commission may delegate the authority to establish the rate under Subchapter N to the executive director if the application is not contested. This provision is proposed to implement THSC, §401.245.

The commission proposes new §336.1305(g) to provide that the executive director may initiate revision to the maximum disposal rate when there is good cause, subject to notice and opportunity for a contested case hearing. This provision is proposed to implement THSC, §401.245.

The commission proposes new §336.1307, which provides the commission to adopt a maximum disposal rate based on certain factors and ensure that the maximum disposal rate is sufficient to cover certain factors. This provision is proposed to implement THSC, §401.246.

The commission proposes new §336.1307(1), which the maximum disposal rate be sufficient to allow the licensee to recover the operating and maintaining the compact waste disposal facility with a reasonable profit. This provision is proposed to implement THSC, §401.246(a)(1).

The commission proposes new §336.1307(2), which the maximum disposal rate is sufficient to provide for the future costs of decommissioning, closing, and post-closure maintenance and surveillance of the facility. This provision is proposed to implement THSC, §401.246(a)(2).

The commission proposes new §336.1307(3) establishing the maximum disposal rate is sufficient to provide for an amount to fund local public projects as required under THSC, §401.244. This provision is proposed to implement THSC, §401.246(a)(3).

The commission proposes new §336.1307(4) establishing the maximum disposal rate is sufficient to provide for a reasonable rate of return on capital investment in the compact waste disposal facility. This provision is proposed to implement THSC, §401.246(a)(4).

The commission proposes new §336.1307(5) establishing the maximum disposal rate is sufficient to provide for an amount necessary to pay all the fees required by rule or statute, financial assurance for the facility, and reimburse the commission for the resident inspectors as required under THSC, §401.206. This provision is proposed to implement THSC, §401.246(a)(5).

The commission proposes new §336.1309 to establish the procedures for filing a rate application package by the licensee. The commission proposes new §336.1309(a) to provide that the licensee shall file an application with the commission to establish an initial maximum disposal rate. The application for the initial maximum disposal rate will include all the required documents, and the licensee's revenue requirements. The application will consider all five factors as specified in §336.1307. This provision is proposed to implement THSC, §401.245.

The commission proposes §336.1309(a)(1) to provide that the licensee shall submit a rate filing application package in accordance with the application prescribed by the executive director. This provision is proposed to implement THSC, §401.245.

The commission proposes new §336.1309(a)(2) to provide that the executive director shall review the application and recommend a maximum disposal rate to the commission for approval. It will also allow the executive director to request additional information during review process. This provision is proposed to implement THSC, §401.245.

The commission proposes new §336.1309(a)(3) which provides the licensee shall notify all known customers that will ship or deliver waste to the facility that will submit an application for the initial maximum disposal rate. The notice will be provided by any method directed by the executive director. The executive director shall maintain a website available to the public to monitor the status of the application. This provision is proposed to implement THSC, §401.245.

The commission proposes new §336.1309(b) to provide that the commission will establish the initial maximum disposal rate after the notices in §336.1309(c) of this section and the opportunity for a contested case hearing have been made. This will ensure that the generators and those affected by this subchapter are given an opportunity to request for a contested case hearing from the commission. This provision is proposed to implement THSC, §401.245.

The commission proposes new §336.1309(c), which provides the commission shall determine the factors necessary to calculate the inflation, volume, and extraordinary volume adjustments. This provision is proposed to implement THSC, §401.245.

The commission proposes new §336.1311 to establish the procedures for determining maximum disposal rates to comply with THSC, §§401.245, 401.246 and 401.247 and to be consistent with the process used by the Public Utility Commission of Texas under the Texas Utilities Code, §§36.051, 36.052, and 36.053.

The commission proposes new §336.1311(a), which provides the procedure for determining the maximum disposal rates that a licensee may charge generators. This provision is proposed to implement THSC, §§401.245, 401.246 and 401.247 and to be consistent with the process used by the Public Utility Commission of Texas under the Texas Utilities Code, §§36.051, 36.052, and 36.053.

The commission proposes new §336.1311(b), which establishes that initially, the maximum disposal rate shall be the initial rates established pursuant to §336.1304. This provision is proposed to implement THSC, §§401.245, 401.246 and 401.247 and to be consistent with the process used by the Public Utility Commission of Texas under the Texas Utilities Code, §§36.051, 36.052, and 36.053.

The commission proposes new §336.1311(c), which provides the maximum disposal rates shall be adjusted in January of each year. This provision is proposed to implement THSC, §§401.245, 401.246 and 401.247 and to be consistent with the process used by the Public Utility Commission of Texas under the Texas Utilities Code, §§36.051, 36.052, and 36.053.

The commission proposes new §336.1311(d), which establishes procedures for the licensee to file for revisions to the maximum disposal rates. This provision is proposed to implement THSC, §§401.245, 401.246 and 401.247 and to be consistent with the process used by the Public Utility Commission of Texas under the Texas Utilities Code, §§36.051, 36.052, and 36.053.

The commission proposes new §336.1311(e), which establishes that an application for revisions to the maximum disposal rate must comply with the requirements of §336.1309(a) of Subchapter N. This provision is proposed to implement THSC, §401.245.

The commission proposes new §336.1311(f), which establishes that a licensee must provide notice to its customers concurrent with the filing of an application for revisions to the maximum disposal rate, including inflation and volume adjustments. This provision is proposed to implement THSC, §401.245.

The commission proposes new §336.1313 to establish the procedures for determining an extraordinary volume adjustment. This provision is proposed to implement THSC, §401.245(b) and (c).

The commission proposes new §336.1313(a) to provide a method for establishing the extraordinary volume adjustment. This provision is proposed to implement THSC, §401.245(b) and (c).

The commission proposes new §336.1313(b) to provide a method for subsequent calculation of the volume adjustment. This provision is proposed to implement THSC, §401.245(b) and (c).

The commission proposes new §336.1315 to establish the procedures for revenue statements and fees to implement THSC, §§401.245, 401.246, and 401.247.

The commission proposes new §336.1315(a) for the licensee of a compact waste facility to file the audited financial statement showing its gross operating revenue for the preceding calendar year for determination of the waste disposal fee. The executive director of the commission determined that the audited financial statement showing its gross operating revenue is required to calculate the waste disposal fee as described in THSC, §401.246(a). The licensee shall also include a validation of payments made in §336.103(f) and (g) of Subchapter B. This provision is proposed to implement THSC, §§401.245, 401.246, and 401.247.

The commission proposes new §336.1315(b) to establish what is an acceptable form of audited financial statement. It must be prepared in accordance with Generally Acceptable Accounting Principles (GAAP) and audited by a Certified Public Accounting (CPA) firm. The licensee will also include the Auditor's Report from the CPA indicating an "unqualified" opinion of the licensee's financial statements. This provision is proposed to implement THSC, §§401.245, 401.246, and 401.247.

The commission proposes new §336.1317 to establish the procedures for determining contracted disposal rates. This provision is proposed to implement THSC, §401.246(b) to be consistent with the process used by the Public Utility Commission of Texas under the Texas Utilities Code, §§36.051, 36.052, and 36.053.

The commission proposes new §336.1319(a) to allow the licensee to contract with any person to provide a contract disposal rate that is lower than the maximum disposal rate. This provision is proposed to

implement THSC, §401.246(b) to be consistent with the process used by the Public Utility Commission of Texas under the Texas Utilities Code, §§36.051, 36.052, and 36.053.

The commission proposes new §336.1319(b) to provide a mechanism for commission approval of a contract or contract amendment. This provision is proposed to implement THSC, §401.246(b) to be consistent with the process used by the Public Utility Commission of Texas under the Texas Utilities Code, §§36.051, 36.052, and 36.053.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rules are in effect, fiscal implications are anticipated for the agency and other units of state and local government due to administration or enforcement of the proposed changes to the Chapter 336 rules. Fiscal implications are also anticipated for regulated entities as a result of the administration or enforcement of the proposed rule revisions.

The primary purpose of the proposed rules is to implement SB 1604, 80th Legislature, 2007. SB 1604 transfers responsibilities for the regulation and licensing of source material recovery, by-product disposal, and commercial radioactive substances storage and processing from the Texas Department of State Health Services (DSHS or Department) to the commission.

This rulemaking effort is the second in a series to implement SB 1604 relating to transfer of certain regulatory responsibilities for radioactive waste from the Department to the TCEQ. Prior to SB 1604, DSHS had responsibility for the regulation and oversight of commercial radioactive waste processing and storage, source material recovery (uranium mining licensing), and by-product material disposal (disposal

of uranium mine and mill tailings and waste) while the TCEQ regulated all other radioactive waste disposal (low-level radioactive waste and non-oil and gas naturally-occurring radioactive material).

SB 1604 also addresses the process for review of an application for a by-product disposal facility proposed for Andrews County. In addition, SB 1604 addresses the underground injection control program for regulation of in situ uranium mining, and a new state fee for the disposal of radioactive waste other than low-level radioactive waste. This phase also includes rulemaking to implement the provisions on well registration in HB 3838, 80th Legislature, as well as other considerations.

The legislature provided TCEQ \$200,000 plus the unexpended and un-obligated portions of the appropriations for the state fiscal biennium beginning September 1, 2005, made to the DSHS for activities related to the transfer. Legislative appropriations for fiscal year 2008 and fiscal year 2009 relating to the regulation of radioactive substances, estimated to be \$988,771 in fiscal year 2008 and \$897,931 in fiscal year 2009 out of the General Revenue Fund, and associated Full-Time-Equivalent Positions (estimated to be 11.0) were to be transferred from the DSHS to the TCEQ. In addition to these amounts, the TCEQ was also appropriated out of the Waste Management Account Number 549 in Strategy A.2.3, Waste Management and Permitting, \$471,388 in fiscal year 2008 and \$460,728 in fiscal year 2009, to be used for the regulation of radioactive substances. This funding was to come from additional fee revenue the agency would be collecting for administering these new responsibilities.

The proposed amendments to Chapter 336 establish the qualifications and duties of the RSO and radiation safety committee, establish requirements for emergency plans for responding to releases, establish

application fees for radioactive materials licenses, establish fees for the disposal of low-level radioactive waste, and clarify requirements that apply to source material recovery and by-product disposal.

The proposed amendments will result in additional fee revenue for the agency. The proposed rules will add fee provisions for license renewals and major amendment applications of radioactive material licenses to reflect the cost of reviewing and processing licensing action requests. Renewals for licenses for near-surface land disposal of low-level radioactive waste under Chapter 336, Subchapter H will increase to \$300,000 for the application fee and \$50,000 for major amendments. Renewals for licenses of uranium recovery and by-product material disposal facilities under Chapter 336, Subchapter L, and radioactive substances processing and storage facilities under Chapter 336, Subchapter M, will increase to \$35,000 for the application fee with major amendments increasing to \$10,000 per application. In addition, for any application submitted under the authority of Chapter 336, the commission would be allowed to assess and collect additional fees from the applicant to recover costs. It is not known how many existing entities will request major amendments to their licenses. Licenses must be renewed on a ten-year cycle and at this time it is not known how many licensees will renew over the next five years, so revenue estimates are not available at this time.

Next, the proposed rules would allow the commission to assess and collect an annual fee from the operator of a nuclear reactor for actual expenses that arise from emergency planning and environmental surveillance activities. These fees will come from the two nuclear power plants in the state (South Texas and Comanche Peak) and are estimated to be less than \$5,000 per facility per year.

The proposed rules would include other fee provisions. Five percent of the gross receipts from compact waste received at the compact waste disposal facility, from any federal facility waste received at the federal facility waste disposal facility, and from a license holder authorized for the disposal of radioactive substances from other persons would be deposited into the General Revenue Fund. These funds would not go to the agency.

The proposed rules would provide that 5% of annual fees assessed for licenses issued under Chapter 336, Subchapters F, G, and K - M be deposited to the Perpetual Care Account. Money and security in this account may be administered by the commission only for the decontamination, decommissioning, stabilization, reclamation, maintenance, surveillance, control, storage, and disposal of radioactive substances for the protection of the public health and safety and the environment. Based upon the amount of annual fees received last year, revenue to the account is estimated to be approximately \$35,000 each year.

The proposed rules also provide for the remittance to the host county 5% of the gross receipts from compact waste received at a compact waste disposal facility, from any federal facility waste received at the federal facility waste disposal facility and license holders authorized for the disposal of radioactive substances from other persons. At this time, one county (Andrews) is expected to be affected by this provision. Revenue estimates to the county are not available at this time.

#### PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law

and increased efficiency of the regulation of radioactive substance processing, storage and disposal through consolidation of these activities at one state agency.

The proposed rules will affect companies seeking licenses and permits from the TCEQ for source material recovery (uranium mining), and for storage, processing, and/or disposal of radioactive material. Program staff estimates that less than twenty source material recovery companies could be affected and that less than five radioactive material storage, processing, and disposal companies could be impacted.

Renewals for licenses for near-surface land disposal of low-level radioactive waste under Chapter 336, Subchapter H will increase to \$300,000 for the application fee and \$50,000 for major amendments.

Renewals for licenses of uranium recovery and by-product material disposal facilities under Chapter 336, Subchapter L, and radioactive substances processing and storage facilities under Chapter 336, Subchapter M, will increase to \$35,000 for the application fee with major amendments increasing to \$10,000 per application. In addition, for any application submitted under the authority of Chapter 336, the commission would be allowed to assess and collect additional fees from the applicant to recover costs. It is not known how many existing entities will request major amendments to their licenses or how many licensees will choose to renew their licenses over the next five years.

The two nuclear power plants (South Texas and Comanche Peak) in the state will be assessed fees for actual expenses that arise from emergency planning and environmental surveillance activities. These are estimated to be less than \$5,000 per facility per year.

The proposed rules allow the commission to establish rates to be charged by the compact waste disposal facility license holder in disposing of Compact Low-Level Radioactive Waste. The proposed rules require the commission to assure that they are fair, just, reasonable, and sufficient considering the value of the licensee's leasehold and license interests, the unique nature of its business operations, the licensee's liability associated with the site, its investment incurred over the term of its operations, and the rate of return equivalent to that earned by comparable enterprises.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

In general, no adverse fiscal implications are expected for small or micro-businesses as a result of the proposed rules. Nuclear Sources and Services Inc. is a radioactive waste storage and processing enterprise which may be a small business. The proposed fee changes would affect them if they seek an amendment to their current license (\$10,000). The proposed changes will also affect them when the ten-year renewal period is up for the current license and if they seek a renewal (\$35,000), but overall these fee increases are not anticipated to be significant.

#### SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect and the proposed rules are required by SB 1604.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact

statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission proposes the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of "a major environmental rule" as defined in the statute. "A 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 rulemaking action amends Chapter 336 for the regulation of radioactive materials. The proposed rulemaking to Chapter 336 would establish the qualifications and duties of the RSO and radiation safety committee, establish requirements for emergency plans for responding to releases, establish application fees for radioactive materials licenses, establish fees for the disposal of low-level radioactive waste, and clarify requirements that apply to source material recovery and by-product disposal. The proposed rulemaking is 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. The proposed rules for the RSO, radiation safety committee, and emergency plans are requirements that already applied to the licensing programs at the DSHS, but were inadvertently omitted from the rules transferred from the department during the Phase 1 rulemaking implementing SB 1604. Additional amendments clarify requirements in Subchapter L that apply to source material recovery or by-product disposal. While these proposed rules do address application fees and waste disposal fees, the commission does not anticipate

that the new fees will adversely affect in a material way the economy, productivity, competition, or jobs because costs associated with license application fees or waste disposal fees would be passed on to the various customers of the licensee or waste generators. The proposed rulemaking action also amends application requirements for these licensing programs in Chapter 305, amends technical requirements for injection wells and other wells for in situ uranium recovery in Chapter 331, amends financial assurance requirements in Chapter 37, amends public notice requirements in Chapter 39, and amends public participation requirements in Chapter 55.

Furthermore, the proposed rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency.

THSC, Chapter 401, authorizes the commission to regulate the disposal of most radioactive substances in Texas. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. In addition, the State of Texas is an "Agreement State" authorized by the United States Nuclear Regulatory Commission

(NRC) to administer a radiation control program under the Atomic Energy Act of 1954, as amended (Atomic Energy Act). The proposed rules are compatible with federal law.

The proposed rules do not exceed an express requirement of state law. THSC, Chapter 401, establishes general requirements, including requirements for fees, for the licensing and disposal of radioactive substances, source material recovery, and commercial radioactive substances storage and processing. THSC, §401.245 requires the commission to adopt compact waste disposal fees by rule. The purpose of the rulemaking is to implement statutory requirements consistent with recent amendments to THSC, Chapter 401, as provided in SB 1604 and HB 1567.

The proposed rules are compatible with a requirement of a delegation agreement or contract between the state and an agency of the federal government. The State of Texas has been designated as an "Agreement State" by the NRC under the authority of the Atomic Energy Act. The Atomic Energy Act requires that the NRC find that the state radiation control program is compatible with the NRC requirements for the regulation of radioactive materials and is adequate to protect health and safety. Under the *Agreement Between the United States Nuclear Regulatory Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended*, NRC requirements must be implemented to maintain a compatible state program for protection against hazards of radiation. The proposed rules are compatible with the NRC requirements and the requirements for retaining status as an "Agreement State."

These rules are proposed under specific authority of the THSC, Chapter 401. THSC, §§401.051, 401.103, 401.104, 401.245, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary assessment under the Private Real Property Rights Preservation Act, Texas Government Code, Chapter 2007. The commission's preliminary assessment is that implementation of these proposed rules would not constitute a taking of real property.

The purpose of these proposed rules is to implement changes to the TRCA required by SB 1604, 80th Legislature, 2007 and HB 1567, 78th Legislature, 2003 for the licensing of by-product material, recovery of source material, commercial radioactive substances processing and storage, and low-level radioactive waste disposal; as well as fee setting for the disposal of low-level radioactive waste. The proposed rules to Chapter 336 would substantially advance this purpose by establishing the requirements for the licenses that are subject to the transfer of jurisdiction under SB 1604 or changes in HB 1567 and establishing the rate-setting process for the assessment of fees for the disposal of low-level radioactive waste under HB 1567.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. The proposed rules do not affect a landowner's rights in private real property because this rulemaking action does not constitutionally burden, nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations. The proposed rules licensing and fee requirements and do not affect real property. The proposed rules would affect those who chose to conduct licensed radioactive materials activities under Chapter 336 or those who generate and dispose low-level radioactive. Therefore, the proposed rules do not affect real property in a manner that is different than would have been affected without these revisions.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

#### ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on September 16, 2008, at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Patricia Duron, Office of Legal Services at (512) 239-6087. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Written comments may be submitted to Patricia Duron, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2007-029-336-PR. The comment period closes October 6, 2008. Copies of the proposed rulemaking can be obtained from the commission's Web site at [http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For further information, please contact Susan Jablonski, Director, Radioactive Materials Division, (512) 239-6466.

## **SUBCHAPTER A: GENERAL PROVISIONS**

### **§336.1**

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed amendment implements SB 1604, 80th Legislature, 2007; THSC, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.412, and 401.2625.

**§336.1. Scope and General Provisions.**

(a) Except as otherwise specifically provided, the rules in this chapter apply to all persons who dispose of radioactive substances; all persons who recover or process source material; and all persons who receive radioactive substances from other persons for storage or processing.

(1) However, nothing in these rules shall apply to any person to the extent that person is subject to regulation by the United States Nuclear Regulatory Commission (NRC) or to radioactive material in the possession of federal agencies.

(2) Any United States Department of Energy contractor or subcontractor or any NRC contractor or subcontractor of the following categories operating within the state, is exempt from the rules in this chapter, with the exception of any applicable fee set forth in Subchapter B of this chapter (relating to Radioactive Substance Fees), to the extent that such contractor or subcontractor under his contract receives, possesses, uses, transfers, or acquires sources of radiation:

(A) prime contractors performing work for the United States Department of Energy at a United States government-owned or controlled site, including the transportation of radioactive material to or from the site and the performance of contract services during temporary interruptions of transportation;

(B) prime contractors of the United States Department of Energy performing research in or development, manufacture, storage, testing, or transportation of atomic weapons or components thereof;

(C) prime contractors of the United States Department of Energy using or operating nuclear reactors or other nuclear devices in a United States government-owned vehicle or vessel; and

(D) any other prime contractor or subcontractor of the United States Department of Energy or the NRC when the state and the NRC jointly determine that:

(i) the exemption of the prime contractor or subcontractor is authorized by law; and

(ii) under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety or the environment.

(3) Radioactive material that is physically received from the federal government by a non-federal facility is subject to state jurisdiction except as provided in paragraph (2) of this subsection.

(4) The rules of this chapter do not apply to transportation of radioactive materials. This provision does not exempt a transporter from other applicable requirements.

(5) The rules in this chapter do not apply to the disposal of radiation machines as defined in this subchapter or electronic devices that produce non-ionizing radiation.

(b) Regulation by the State of Texas of source material, by-product material, and special nuclear material in quantities not sufficient to form a critical mass is subject to the provisions of the agreement between the State of Texas and the NRC and to 10 Code of Federal Regulations Part 150 (10 CFR Part 150) (Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274). (A copy of the Texas agreement, "Articles of Agreement between the United States Nuclear Regulatory Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended" (Agreement), may be obtained from this commission.) Under the Agreement and 10 CFR Part 150, the NRC retains certain regulatory authorities over source material, by-product material, and special nuclear material in the State of Texas. Persons in the State of Texas are not exempt from the regulatory requirements of the NRC with respect to these retained authorities.

(c) No person may receive, possess, use, transfer, or dispose of radioactive material, which is subject to the rules in this chapter, in such a manner that the standards for protection against radiation prescribed in these rules are exceeded.

(d) Each person licensed by the commission under this chapter shall confine possession, use, and disposal of licensed radioactive material to the locations and purposes authorized in the license.

(e) No person may cause or allow the release of radioactive material, which is subject to the rules in this chapter, to the environment in violation of this chapter or of any rule, license, or order of the Texas Commission on Environmental Quality (commission).

(f) No person shall:

(1) dispose of low-level radioactive waste on site, except as authorized under §336.501(b) of this title (relating to Scope and General Provisions);

(2) receive low-level radioactive waste from other persons for the purpose of disposal, except for a person specifically licensed for the disposal of low-level radioactive waste;

(3) dispose of radioactive materials other than low-level radioactive waste, except for diffuse naturally occurring radioactive material waste having concentrations of less than 2,000 [2000] picocuries (PCi/G) radium-226 or radium-228;

(4) dispose of radioactive materials from other persons other than low-level radioactive waste, except for naturally occurring radioactive material waste in accordance with Subchapter K of this chapter (relating to Commercial Disposal of Naturally Occurring Radioactive Material Waste from Public Water Systems);

(5) recover or process source material, except in accordance with Subchapter L of this chapter (relating to Licensing of Source Material Recovery and By-Product Material Disposal Facilities);

(6) store, process, or dispose of by-product material, except in accordance with Subchapter L of this chapter; or

(7) receive radioactive substances from other persons for storage or processing, except in accordance with Subchapter M of this chapter (relating to Licensing of Radioactive Substances Processing and Storage Facilities).

(g) For the purpose of this chapter, any time the term "low-level radioactive waste" is used, the provision also applies to accelerator-produced radioactive material.

## **SUBCHAPTER B: RADIOACTIVE SUBSTANCE FEES**

### **§§336.101, 336.103, 336.105, 336.107, and 336.114**

#### STATUTORY AUTHORITY

The amendments and new section are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments and new section are also proposed under Texas Health and Safety Code (THSC), Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed amendments and new section implement SB 1604, 80th Legislature, 2007; THSC, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.412, and 401.2625.

**§336.101. Purpose and Scope.**

(a) This subchapter establishes fees for licensing, commercial disposal, emergency response activities including training, and other regulatory services and provides for their payment.

(b) Except as otherwise specifically provided, this subchapter applies to any person who is:

(1) an applicant for or holder of a radioactive material license issued under this chapter;

or

(2) the holder of a fixed nuclear facility construction permit or operating license issued by the United States Nuclear Regulatory Commission under 10 Code of Federal Regulations [CFR] Part 50 (Domestic Licensing of Production and Utilization Facilities); or

(3) the operator of any other fixed nuclear facility.

**§336.103. Schedule of Fees for Subchapter H Licenses.**

(a) An application for a low-level radioactive waste disposal site license under Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level

Radioactive Waste) shall be accompanied by a nonrefundable application processing fee of \$500,000. If the commission's costs in processing an application under Subchapter H of this chapter [(relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste)] exceed the \$500,000 application processing fee, the commission may assess and collect additional fees from the applicant to recover the costs. Recoverable costs include costs incurred by the commission for administrative review, technical review, and hearings associated with the application.

(b) An applicant shall submit an annual fee for the actual costs incurred by the commission for hearings associated with an application for a low-level radioactive waste disposal site under Subchapter H of this chapter. The executive director shall send an invoice for the amount of the costs incurred during the period September 1 through August 31 of each year. Payment shall be made within 30 days following the date of the invoice.

(c) A holder of a license for a low-level radioactive waste disposal site issued under Subchapter H of this chapter shall submit an annual license fee for the services received. This fee shall recover for the state the actual expenses arising from the regulatory activities associated with the license. This fee shall include reimbursement for the salary and other expenses of the resident inspectors as provided by §336.743 of this title (relating to Resident Inspector). The executive director shall send an invoice for the amount of the costs incurred during the period September 1 through August 31 of each year. Payment shall be made within 30 days following the date of the invoice.

(d) An application for a major amendment of a license issued under Subchapter H of this chapter must be accompanied by an application fee of \$50,000.

(e) An application for renewal of a license issued under Subchapter H of this chapter must be accompanied by an application fee of \$300,000.

(f) The compact waste disposal facility license holder shall remit to the commission 5% of the gross receipts from compact waste received at the compact waste disposal facility and any federal facility waste received at the federal facility waste disposal facility. Payment shall be made within 30 days of the end of each quarter. The end of each quarter is the last day of the months of November, February, May, and August.

(g) The compact waste disposal facility license holder shall remit directly to the host county 5% of the gross receipts from compact waste received at the compact waste disposal facility and any federal facility waste received at the federal facility waste disposal facility as required in Texas Health and Safety Code, §401.244. Payment shall be made within 30 days of the end of each quarter. The end of each quarter is the last day of the months of November, February, May, and August.

**§336.105. Schedule of Fees for Other Licenses.**

(a) Each application for a license under Subchapter F of this chapter (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), Subchapter G of this chapter (relating to Decommissioning Standards), Subchapter K of this chapter (relating to Commercial Disposal of Naturally Occurring Radioactive Material Waste from Public Water Systems), Subchapter L of this chapter (relating to Licensing of Source Material Recovery and By-product Material Disposal Facilities), or Subchapter M

of this chapter (relating to Licensing of Radioactive Substances Processing and Storage Facilities) must be accompanied by an application fee as follows:

(1) facilities regulated under Subchapter F of this chapter: \$50,000;

(2) facilities regulated under Subchapter G of this chapter: \$10,000;

(3) facilities regulated under Subchapter K of this chapter: \$50,000;

(4) facilities regulated under Subchapter L of this chapter: \$463,096 for conventional mining; \$322,633 for in situ mining; \$325,910 for heap leach; and \$374,729 for disposal only; or

(5) facilities regulated under Subchapter M of this chapter: \$3,830 for Waste Processing - Class I Exempt; \$39,959 for Waste Processing - Class I; \$94,661 for Waste Processing - Class II; and \$273,800 for Waste Processing - Class III.

(b) An annual license fee shall be paid for each license issued under Subchapter F, Subchapter G, Subchapter K, Subchapter L, and Subchapter M of this chapter. The amount of each annual fee is as follows:

(1) facilities regulated under Subchapter F of this chapter: \$25,000;

(2) facilities regulated under Subchapter G of this chapter: \$8,400;

(3) facilities regulated under Subchapter K of this chapter: \$25,000;

(4) facilities regulated under Subchapter L of this chapter that are operational:  
\$60,929.50;

(5) facilities regulated under Subchapter L of this chapter that are in closure: \$60,929.50;

(6) facilities regulated under Subchapter L of this chapter that are in post-closure:  
\$52,011.50 for conventional mining; \$26,006 for in situ mining; and \$52,011.50 for disposal only;

(7) facilities regulated under Subchapter L of this chapter, if additional noncontiguous source material recovery facility sites are authorized under the same license, the annual fee shall be increased by 25% for each additional site and 50% for sites in closure;

(8) facilities regulated under Subchapter L of this chapter, if an authorization for disposal of by-product material is added to a license, the annual fee shall be increased by 25%;

(9) facilities regulated under Subchapter L of this chapter, the following one-time fees apply if added after an environmental assessment has been completed on a facility:

(A) \$28,658 for in situ wellfield on noncontiguous property;

(B) \$71,651 for in situ satellite;

(C) \$11,235 for wellfield on contiguous property;

(D) \$50,756 for non-vacuum dryer; or

(E) \$71,651 for disposal (including processing, if applicable) of by-product material; or

(10) facilities regulated under Subchapter M of this chapter: \$3,830 for Waste Processing - Class I Exempt; \$39,959 for Waste Processing - Class I; \$94,661 for Waste Processing - Class II; and \$273,800 for Waste Processing - Class III.

(c) An application for a major amendment of a license issued under Subchapter F, Subchapter G, [or] Subchapter K, Subchapter L, or Subchapter M of this chapter must be accompanied by an application fee of \$10,000.

(d) An application for renewal of a license issued under Subchapter F, Subchapter G, [or] Subchapter K, Subchapter L, or Subchapter M of this chapter must be accompanied by an application fee of \$35,000.

(e) Upon permanent cessation of all disposal activities and approval of the final decommissioning plan, holders of licenses issued under Subchapter F, [or] Subchapter K, Subchapter L, or Subchapter M of this chapter shall use the applicable fee schedule for subsections (b) and (c) of this section.

(f) For any application for a license issued under this chapter, [an application to dispose of by-product material that was filed with the Texas Department of State Health Services on or before January 1, 2007,] the commission may assess and collect additional fees from the applicant to recover costs. Recoverable costs include costs incurred by the commission for administrative review, technical review, and hearings associated with the application. The executive director shall send an invoice for the amount of the costs incurred during the period September 1 through August 31 of each year. Payment shall be made within 30 days following the date of the invoice.

(g) If a licensee remitted a biennial licensing fee to the Texas Department of State Health Services during the one year period prior to June 15, 2007, the licensee is not subject to an annual fee under subsection (b) of this section until the expiration of the second year for which the biennial fee was paid.

(h) The commission may charge an additional 5% of annual fee assessed under subsection (b) of this section. The fee is non-refundable and will be deposited to the perpetual care account.

(i) The holder of a license authorizing disposal of a radioactive substance from other persons shall remit to the commission 5% of the holder's gross receipts received from disposal operations under a license. Payment shall be made within 30 days of the end of each quarter. The end of each quarter is the last day of the months of November, February, May, and August. This subsection does not apply to the disposal of compact waste or federal facility waste.

(j) The holder of a license authorizing disposal of a radioactive substance from other persons shall remit directly to the host county 5% of the gross receipts disposal operations under a license as required in Texas Health and Safety Code, §401.271(2). Payment shall be made within 30 days of the end of each quarter. The end of each quarter is the last day of the months of November, February, May, and August. This subsection does not apply to the disposal of compact waste or federal facility waste.

**§336.107. Annual License Fee Due Date and Period Covered.**

(a) Payment for annual fees set forth in §336.105(b) of this title (relating to Schedule of Fees for Other Licenses) shall be due on or before October 31st of each year [in full each year on or before the last day of the expiration month of the license. As an example, if the license expires on May 31, 1999, annual fees are due on or before May 31 of each year].

(b) The period covered by each annual fee set forth in §336.105(b) of this title shall be the 12 months preceding the fee payment due date, except fees may be prorated for a period less than 12 months to accommodate the due date established in subsection (a) of this section.

**§336.114. Fee for Fixed Nuclear Facilities.**

The commission may set and collect an annual fee from the operator of each nuclear reactor or other fixed nuclear facility in the state that uses special nuclear material. The amount of fees collected may not exceed the actual expenses that arise from emergency planning and implementation and environmental surveillance activities.

## **SUBCHAPTER C: GENERAL LICENSING REQUIREMENTS**

### **§336.208, §336.210**

#### STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The new sections are also proposed under Texas Health and Safety Code (THSC), Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed new sections implement SB 1604, 80th Legislature, 2007; THSC, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.412, and 401.2625.

**§336.208. Radiation Safety Officer.**

(a) Qualifications of the designated radiation safety officer (RSO) are adequate for the purpose requested and include as a minimum:

(1) have earned at least a bachelor's degree in a physical or biological science, industrial hygiene, health physics, radiation protection, or engineering from an accredited college or university, or an equivalent combination of training and relevant experience, with two years of relevant experience equivalent to a year of academic study, from a uranium or mineral extraction/recovery, radioactive waste processing, or a radioactive waste or by-product material disposal facility;

(2) have at least one year of relevant experience, in addition to that used to meet the educational requirement, working under the direct supervision of the RSO at a uranium or mineral extraction/recovery, radioactive waste processing, or radioactive waste or by-product material disposal facility; and

(3) have at least four weeks of specialized training in health physics or radiation safety applicable to uranium or mineral extraction/recovery, radioactive waste processing, or radioactive waste or by-product material disposal operations from a course provider that has been evaluated and approved by the agency.

(b) The specific duties of the RSO include, but are not limited to, the following:

(1) to establish and oversee operating, safety, emergency, and as low as reasonably achievable procedures, and to review them at least annually to ensure that the procedures are current and conform with this chapter;

(2) to oversee and approve all phases of the training program for operations and/or personnel so that appropriate and effective radiation protection practices are taught;

(3) to ensure that required radiation surveys and leak tests are performed and documented in accordance with this chapter, including any corrective measures when levels of radiation exceed established limits;

(4) to ensure that individual monitoring devices are used properly by occupationally-exposed personnel, that records are kept of the monitoring results, and that timely notifications are made in accordance with §336.405 of this title (relating to Notifications and Reports to Individuals);

(5) to investigate and cause a report to be submitted to the agency for each known or suspected case of radiation exposure to an individual or radiation level detected in excess of limits established by this chapter and each theft or loss of source(s) of radiation, to determine the cause(s), and to take steps to prevent a recurrence;

(6) to investigate and cause a report to be submitted to the executive director for each known or suspected case of release of radioactive material to the environment in excess of limits established by this chapter;

(7) to have a thorough knowledge of management policies and administrative procedures of the licensee;

(8) to assume control and have the authority to institute corrective actions, including shutdown of operations when necessary in emergency situations or unsafe conditions;

(9) to ensure that records are maintained as required by this chapter;

(10) to ensure the proper storing, labeling, transport, use and disposal of sources of radiation, storage, and/or transport containers;

(11) to ensure that inventories are performed in accordance with the activities for which the license application is submitted;

(12) to perform an inventory of the radioactive sealed sources authorized for use on the license every six months and make and maintain records of the inventory of the radioactive sealed sources authorized for use on the license every six months, to include, but not be limited to, the following:

(A) isotope(s);

(B) quantity(ies);

(C) radioactivity(ies); and

(D) date inventory is performed.

(13) to ensure that personnel are complying with this chapter, the conditions of the license, and the operating, safety, and emergency procedures of the licensee; and

(14) to serve as the primary contact with the agency.

**§336.210. Emergency Plan for Responding to a Release.**

(a) A new or renewal application for each specific license to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in subsection (e) of this section shall contain either:

(1) an evaluation showing that the maximum dose to a person off-site due to a release of radioactive material would not exceed 1 rem effective dose equivalent or 5 rems to the thyroid;

or

(2) an emergency plan for responding to a release of radioactive material.

(b) One or more of the following factors may be used to support an evaluation submitted in accordance with subsection (a)(1) of this section:

(1) the radioactive material is physically separated so that only a portion could be involved in an accident;

(2) all or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged;

(3) the release fraction in the respirable size range would be lower than the release fraction in subsection (e) of this section due to the chemical or physical form of the material;

(4) the solubility of the radioactive material would reduce the dose received;

(5) facility design or engineered safety features in the facility would cause the release fraction to be lower than that in subsection (e) of this section;

(6) operating restrictions or procedures would prevent a release fraction as large as that in subsection (e) of this section; or

(7) other factors appropriate for the specific facility.

(c) An emergency plan for responding to a release of radioactive material submitted in accordance with subsection (a)(1) of this section shall include the following information.

(1) Facility description. A brief description of the licensee's facility and area near the site.

(2) Types of accidents. An identification of each type of radioactive materials accident for which protective actions may be needed.

(3) Classification of accidents. A classification system for classifying accidents as alerts or site area emergencies.

(4) Detection of accidents. Identification of the means of detecting each type of accident in a timely manner.

(5) Mitigation of consequences. A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers onsite, and a description of the program for maintaining the equipment.

(6) Assessment of releases. A brief description of the methods and equipment to assess releases of radioactive materials.

(7) Responsibilities. A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying off-site response organizations and the agency; also, responsibilities for developing, maintaining, and updating the plan.

(8) Notification and coordination. A commitment to and a brief description of the means to promptly notify off-site response organizations and request off-site assistance, including medical assistance for the treatment of contaminated injured onsite workers when appropriate. A control point shall be established. The notification and coordination shall be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify the agency immediately after notification of the appropriate off-site response organizations and not later than one hour after the licensee declares an emergency. These reporting requirements do not supersede or release licensees from complying with the requirements in accordance with the Emergency Planning and Community Right-to-Know-Act of 1986, Title III, Publication L. 99-499 or other state or federal reporting requirements.

(9) Information to be communicated. A brief description of the types of information on facility status, radioactive releases, and recommended protective actions, if necessary, to be given to off-site response organizations and to the agency.

(10) Training. A brief description of the frequency, performance objectives, and plans for the training that the licensee will provide workers on how to respond to an emergency, including any special instructions and orientation tours the licensee would offer to fire, police, medical, and other

emergency personnel. The training shall familiarize personnel with site-specific emergency procedures. Also, the training shall thoroughly prepare site personnel for their responsibilities in the event of accident scenarios postulated as most probable for the specific site, including the use of team training for such scenarios.

(11) Safe shutdown. A brief description of the means of restoring the facility to a safe condition after an accident.

(12) Exercises. Provisions for conducting quarterly communications checks with off-site response organizations at intervals not to exceed three months and biennial onsite exercises to test response to simulated emergencies. Communications checks with off-site response organizations shall include the check and update of all necessary telephone numbers. The licensee shall invite off-site response organizations to participate in the biennial exercises. Participation of off-site response organizations in biennial exercises, although recommended, is not required. Exercises shall use accident scenarios postulated as most probable for the specific site and the scenarios shall not be known to most exercise participants. The licensee shall critique each exercise using individuals not having direct implementation responsibility for the plan. Critiques of exercises shall evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques shall be corrected.

(13) Hazardous chemicals. A certification that the applicant has met its responsibilities in accordance with the Emergency Planning and Community Right-to-Know Act of 1986.

Title III, Publication L. 99-499, if applicable to the applicant's activities at the proposed place of use of the radioactive material.

(d) The licensee shall allow the off-site response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it to the agency. The licensee shall provide any comments received within the 60 days to the agency with the emergency plan.

(e) The following indicates release fractions for radioactive material.

Figure: 30 TAC §336.210(e)

Radioactive Material*	Release Fraction	Quantity (curies)	Radioactive Material*	Release Fraction	Quantity (curies)	Radioactive Material*	Release Fraction	Quantity (curies)
Ac-228 (89)	0.001	4,000	In-114m (49)	0.01	1,000	Xe-133 (54)	1.0	900,000
Am-241 (95)	0.001	2	Ir-192 (77)	0.001	40,000	Y-91 (39)	0.01	2,000
Am-242 (95)	0.001	2	Fe-55 (26)	0.01	40,000	Zn-65 (30)	0.01	5,000
Am-243 (95)	0.001	2	Fe-59 (26)	0.01	7,000	Zr-93 (40)	0.01	400
Sb-124 (51)	0.01	4,000	Kr-85 (36)	1.0	6,000,000	Zr-95 (40)	0.01	5,000
Sb-126 (51)	0.01	6,000	Pb-210 (82)	0.01	8	Any other	0.01	10,000
Ba-133 (56)	0.01	10,000	Mn-56 (25)	0.01	60,000	β-emitter		
Ba-140 (56)	0.01	30,000	Hg-203 (80)	0.01	10,000	Mixed fission products	0.01	1,000
Bi-207 (83)	0.01	5,000	Mo-99 (42)	0.01	30,000	Mixed corrosion products	0.01	10,000
Bi-210 (83)	0.01	600	Np-237 (93)	0.001	2	Contaminated equipment, β-		
Cd-109 (48)	0.01	1,000	Ni-63 (28)	0.01	20,000	Irradiated material, any form other than solid non-combustible	0.01	1,000
Cd-113 (48)	0.01	80	Nb-94 (41)	0.01	300			
Ca-45 (20)	0.01	20,000	P-32 (15)	0.5	100			
Cf-252 (98)	0.001	9(20mg)	P-33 (15)	0.5	1,000			
C-14 (6)**	0.01	50,000	Po-210 (84)	0.01	10			
Ce-141 (58)	0.01	10,000	K-42 (19)	0.01	9,000			
Ce-144 (58)	0.01	300	Pm-145 (61)	0.01	4,000			
Cs-134 (55)	0.01	2,000	Pm-147 (61)	0.01	4,000			
Cs-137 (55)	0.01	2,000	Ru-106 (44)	0.01	200			
Cl-36 (17)	0.5	100	Sm-151 (62)	0.01	4,000			
Cr-51 (24)	0.01	300,000	Sc-46 (21)	0.01	3,000			

Co-60 (27)	0.001	5,000	Se-75 (34)	0.01	10,000	Irradiated material, solid non-combustible	0.001	10,000
Cu-64 (29)	0.01	200,000	Ag110m (47)	0.01	1,000			
Cm-242 (96)	0.001	60	Na-22 (11)	0.01	9,000	Mixed radioactive waste, β-	0.01	1,000
Cm-243 (96)	0.001	3	Na-24 (11)	0.01	10,000			
Cm-244 (96)	0.001	4	Sr-89 (38)	0.01	3,000	Packaged waste, β-***	0.001	10,000
Cm-245 (96)	0.001	2	Sr-90 (38)	0.01	90			
Eu-152 (63)	0.01	500	Sr-35 (16)	0.5	900	Any other oe Emitter	0.001	2
Eu-154 (63)	0.01	400	Tc-99 (43)	0.01	10,000			
Eu-155 (63)	0.01	3,000	Tc-99m (43)	0.01	400,000	Contaminated equipment oe	0.0001	20
Ge-68 (32)	0.01	2,000	Te-127m(52)	0.01	5,000			
Gd-153 (64)	0.01	5,000	Te-129m(52)	0.01	5,000	Packaged waste***	0.0001	20
Au-198 (79)	0.01	30,000	Tb-160 (65)	0.01	4,000			
Hf-172 (72)	0.01	400	Tm-170 (69)	0.01	4,000			
Hf-181 (72)	0.01	7,000	Sn-113 (50)	0.01	10,000			
Ho-166 (67)	0.01	100	Sn-123 (50)	0.01	3,000			
H-3 (1)	0.5	20,000	Sn-126 (50)	0.01	1,000			
I-125 (53)	0.5	10	Ti-144 (22)	0.01	100			
I-131 (53)	0.5	10	V-48 (23)	0.01	7,000			

\* For combinations of radionuclides, consideration of the need for an emergency plan is required if the sum of the ratios of the quantity of each radionuclide authorized to the quantity listed for that radionuclide in this paragraph exceeds one. ( ) indicates atomic number.

\*\* Non CO forms only.

\*\*\* Waste packaged in Type B containers does not require an emergency plan.

**SUBCHAPTER L: LICENSING OF SOURCE MATERIAL RECOVERY AND BY-PRODUCT  
MATERIAL DISPOSAL FACILITIES**

**§§336.1105, 336.1109, 336.1113, and 336.1125**

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments are also proposed under Texas Health and Safety Code (THSC), Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning

Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed amendments implement SB 1604, 80th Legislature, 2007; THSC, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.412, and 401.2625.

**§336.1105. Definitions.**

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) **Aquifer**--A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs. Any saturated zone created by uranium or thorium recovery operations would not be considered an aquifer unless the zone is or potentially is:

(A) hydraulically interconnected to a natural aquifer;

(B) capable of discharge to surface water; or

(C) reasonably accessible because of migration beyond the vertical projection of the boundary of the land transferred for long-term government ownership and care in accordance with §336.1131 of this title (relating to Land Ownership of By-Product Material Disposal Sites).

(2) **As expeditiously as practicable considering technological feasibility**--As quickly as possible considering the physical characteristics of the by-product material and the site, the limits of "available technology" (as defined in this section), the need for consistency with mandatory requirements of other regulatory programs, and "factors beyond the control of the licensee" (as defined in this section). The phrase permits consideration of the cost of compliance only to the extent specifically provided for by use of the term "Available technology."

(3) **Available technology**--Technologies and methods for emplacing a final radon barrier on by-product material piles or impoundments. This term must not be construed to include extraordinary measures or techniques that would impose costs that are grossly excessive as measured by practice within the industry (or one that is reasonably analogous), (for example, by way of illustration only, unreasonable overtime, staffing, or transportation requirements, etc., considering normal practice in the industry; laser fusion of soils; etc.), provided there is reasonable progress toward emplacement of the final radon barrier. To determine grossly excessive costs, the relevant baseline against which costs must be compared is the cost estimate for tailings impoundment closure contained in the licensee's approved reclamation plan, but costs beyond these estimates shall not automatically be considered grossly excessive.

(4) **By-product material**--Tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by such solution extraction operations do not constitute "by-product material" within this definition.

(5) **By-product material disposal cell**--A man-made excavation and/or construction designed, sited, and built in accordance with the requirements of §336.1129 of this title (relating to Technical Requirements) for the purpose of disposal of by-product material.

(6) **By-product material pond**--A man-made excavation designed, constructed, and sited in accordance with the requirements of §336.1129 of this title (relating to Technical Requirements).

(7) [(5)] **Capable fault**--As used in this section, "Capable fault" has the same meaning as defined in Section III(g) of Appendix A of Title 10 Code of Federal Regulations (CFR) Part 100.

(8) [(6)] **Closure**--The post-operational activities to decontaminate and decommission the buildings and site used to produce by-product materials and reclaim the tailings or disposal area, including groundwater restoration, if needed.

(9) [(7)] **Closure plan**--The plan approved by the agency to accomplish closure. The closure plan consists of a decommissioning plan and may also include a reclamation plan.

(10) [(8)] **Commencement of construction**--Any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site, but does not include changes desirable for the temporary use of the land for public recreational uses, necessary borings to determine site characteristics or other preconstruction monitoring to establish background information related to the suitability of a site, or to the protection of the environment.

(11) [(9)] **Compliance period**--The period of time that begins when the agency sets secondary groundwater protection standards and ends when the owner or operator's license is terminated and the site is transferred to the state or federal government for long-term care, if applicable.

(12) [(10)] **Dike**--An embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(13) [(11)] **Disposal area**--The area containing by-product materials to which the requirements of §336.1129(p) - (aa) of this title (relating to Technical Requirements) apply.

(14) [(12)] **Existing portion**--As used in §336.1129(i)(1) of this title (relating to Technical Requirements), "existing portion" is that land surface area of an existing surface impoundment on which significant quantities of uranium or thorium by-product materials had been placed prior to September 30, 1983.

(15) [(13)] **Factors beyond the control of the licensee**--Factors proximately causing delay in meeting the schedule in the applicable reclamation plan for the timely emplacement of the final radon barrier notwithstanding the good faith efforts of the licensee to complete the barrier in compliance with §336.1129(x) of this title (relating to Technical Requirements). These factors may include, but are not limited to:

(A) physical conditions at the site;

(B) inclement weather or climatic conditions;

(C) an act of God;

(D) an act of war;

(E) a judicial or administrative order or decision, or change to the statutory, regulatory, or other legal requirements applicable to the licensee's facility that would preclude or delay the performance of activities required for compliance;

(F) labor disturbances;

(G) any modifications, cessation or delay ordered by state, federal, or local agencies;

(H) delays beyond the time reasonably required in obtaining necessary government permits, licenses, approvals, or consent for activities described in the reclamation plan proposed by the licensee that result from government agency failure to take final action after the licensee has made a good faith, timely effort to submit legally sufficient applications, responses to requests (including relevant data requested by the agencies), or other information, including approval of the reclamation plan; and

(I) an act or omission of any third party over whom the licensee has no control.

(16) [(14)] **Final radon barrier**--The earthen cover (or approved alternative cover) over by-product material constructed to comply with §336.1129(p) - (aa) of this title (relating to technical requirements) (excluding erosion protection features).

(17) [(15)] **Groundwater**--Water below the land surface in a zone of saturation. For purposes of this subchapter, groundwater is the water contained within an aquifer as defined in this section.

(18) [(16)] **Hazardous constituent**--Subject to §336.1129(j)(5) of this title (relating to Technical Requirements), "hazardous constituent" is a constituent that meets all three of the following tests:

(A) the constituent is reasonably expected to be in or derived from the by-product material in the disposal area;

(B) the constituent has been detected in the groundwater in the uppermost aquifer; and

(C) the constituent is listed in 10 Code of Federal Regulations Part 40, Appendix A, Criterion 13.

(19) **In situ leach**--Refers to the actual oxidation and dissolution of uranium in an underground formation.

(20) **In situ recovery**--Refers to the process of stripping, precipitating, de-watering, and drying uranium in a surface processing plant.

(21) [(17)] **Leachate**--Any liquid, including any suspended or dissolved components in the liquid, that has percolated through or drained from the by-product material.

(22) [(18)] **Licensed site**--The area contained within the boundary of a location under the control of persons generating or storing by-product materials under a license.

(23) [(19)] **Liner**--A continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment that restricts the downward or lateral escape of by-product material, hazardous constituents, or leachate.

(24) [(20)] **Maximum credible earthquake**--That earthquake that would cause the maximum vibratory ground motion based upon an evaluation of earthquake potential considering the regional and local geology and seismology and specific characteristics of local subsurface material.

(25) [(21)] **Milestone**--An action or event that is required to occur by an enforceable date.

(26) [(22)] **Operation**--

(A) The period of time during which a by-product material disposal area is being used for the continued placement of by-product material or is in standby status for such placement. A disposal area is in operation from the day that by-product material is first placed in it until the day final closure begins; and

(B) The period of time during which an in situ leach uranium recovery operation is actively leaching or recovering uranium.

(27) [(23)] **Point of compliance**--The site-specific location in the uppermost aquifer where the groundwater protection standard shall be met. The objective in selecting the point of compliance is to provide the earliest practicable warning that an impoundment is releasing hazardous constituents to the groundwater. The point of compliance is selected to provide prompt indication of groundwater contamination on the hydraulically downgradient edge of the disposal area.

(28) [(24)] **Principal activities**--Activities authorized by the license that are essential to achieving the purpose(s) for which the license is issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

(29) Reclamation--Those activities at a uranium recovery licensed facility that work towards achieving the criteria under this subchapter for release of equipment, facilities and/or the site (including land) to unrestricted use or termination of the license.

(30) [(25)] **Reclamation plan**--For the purposes of §336.1129(p) - (aa) of this title (relating to Technical Requirements), "reclamation plan" is the plan detailing activities to accomplish reclamation of the by-product material disposal area in accordance with the technical criteria of this section. The reclamation plan shall include a schedule for reclamation milestones that are key to the completion of the final radon barrier, including as appropriate, but not limited to, windblown tailings retrieval and placement on the pile, interim stabilization (including dewatering or the removal of freestanding liquids and recontouring), and final radon barrier construction. Reclamation of by-product material shall also be addressed in the closure plan. The detailed reclamation plan may be incorporated into the closure plan.

(31) **Restoration**--Those activities that seek to return the groundwater at an underground injection control permitted site to restoration levels established by permit.

(32) [(26)] **Security**--This term has the same meaning as financial assurance.

(33) [(27)] **Surface impoundment**--A natural topographic depression, man-made excavation, or diked area at a conventional uranium mill, which is designed to receive waste from the milling process which may contain [hold an accumulation of] liquid waste or wastes containing free liquids, solid wastes, mill site demolition materials and debris, and other by-product materials from the milling site. [and which is not an injection well.]

(34) [(28)] **Unrefined and unprocessed ore**--Ore in its natural form before any processing, such as grinding, roasting, beneficiating, or refining.

(35) [(29)] **Uppermost aquifer**--The geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(36) [(30)] **Uranium recovery, or source material recovery**--Any uranium extraction or concentration activity that results in the production of "by-product material" as it is defined in this chapter. As used in this definition, "Uranium recovery" has the same meaning as "uranium milling" in 10 Code of Federal Regulations §40.4.

#### **§336.1109. General Requirements for the Issuance of Specific Licenses.**

A license application may be approved if the agency determines that the applicant has met the requirements of §336.207 of this title (relating to General Requirements for Issuance of a License) and the following:

(1) qualifications of the designated radiation safety officer [(RSO)] as stated in §336.208 [§336.1(h)] of this title (relating to Radiation Safety Officer) [subchapter]; and [are adequate for the purpose requested in the application and include as a minimum:]

[(A) have earned at least a bachelor's degree in a physical or biological science, industrial hygiene, health physics, radiation protection, or engineering from an accredited college or university, or an equivalent combination of training and relevant experience, with two years of relevant

experience equivalent to a year of academic study, from a uranium or mineral extraction/recovery, radioactive waste processing, or a radioactive waste or by-product material disposal facility;]

[(B) have at least one year of relevant experience, in addition to that used to meet the educational requirement, working under the direct supervision of the radiation safety officer at a uranium or mineral extraction/recovery, radioactive waste processing, or radioactive waste or by-product material disposal facility; and]

[(C) have at least four weeks of specialized training in health physics or radiation safety applicable to uranium or mineral extraction/recovery, radioactive waste processing, or radioactive waste or by-product material disposal operations from a course provider that has been evaluated and approved by the agency; and]

(2) the applicant satisfies all applicable special requirements in this subchapter.

**§336.1113. Specific Terms and Conditions of Licenses.**

Unless otherwise specified, each license issued in accordance with this section is subject to the requirements of §305.125 of this title (relating to Standard Permit Conditions) and the following.

(1) Daily inspection of any by-product material retention systems shall be conducted by the licensee. General qualifications for individuals conducting inspections shall be approved by the agency. Records of the inspections shall be maintained for review by the agency.

(2) In addition to the applicable requirements of §336.350 and §336.352 of this title (relating to Reports of Stolen, Lost, or Missing Licensed Radioactive Material and Reports of Exposures, Radiation Levels, and Concentrations of Radioactive Material Exceeding the Limits), the licensee shall immediately notify the agency of the following:

(A) any failure in a by-product material retention system that results in a release of by-product material into unrestricted areas;

(B) any release of radioactive material that exceeds the concentrations for water listed in Table II, Column 2, of §336.359 of this title (relating to Appendix B. Annual Limits in Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage) and that extends beyond the licensed boundary;

(C) any spill that exceeds 20,000 gallons and that exceeds the concentrations for water listed in Table II, Column 2, of §336.359 of this title; or

(D) any release of solids that exceeds the limits in §336.1115(e) of this title (relating to Expiration and Termination of Licenses; Decommissioning of Sites, Separate Buildings or Outdoor Areas) and that extends beyond the licensed boundary.

(3) In addition to the applicable requirements of Chapter 327 of this title (relating to Spill Prevention and Control) and §336.350 and §336.352 of this title, the licensee shall notify the agency within 24 hours of the following:

(A) any spill that extends:

(i) beyond the wellfield monitor well ring;

(ii) more than 400 feet from an injection or production well pipe artery to or from a recovery plant; or

(iii) more than 200 feet from a recovery plant; or

(B) any spill that exceeds 2,000 gallons and that exceeds the concentrations for water listed in Table II, Column 2, of §336.359 of this title.

(4) a written report to the executive director within 30 days after learning of the occurrence of a spill as described in subparagraph (A) or (B) of this paragraph. The report shall include the following:

(i) location of the spill;

(ii) cause of the spill;

(iii) corrective steps taken or planned to ensure against a recurrence; and

(iv) timely schedule for remediation of the spill or release, if required.

**§336.1125. Financial Assurance [Security] Requirements.**

(a) Financial assurance [security] for decontamination, decommissioning, reclamation, restoration, disposal, and any other requirements of the agency shall be established by each licensee 60 days prior to the receipt or possession of radioactive substances, or prior to injection of mining fluid into a production area to assure that sufficient funds will be available to carry out the decontamination and decommissioning of buildings and the site and for the reclamation of any by-product material disposal areas. The amount of funds to be ensured by such financial assurance mechanism [security arrangements] shall be based on agency-approved cost estimates in an agency-approved closure plan for:

(1) decontamination and decommissioning of buildings and the site to levels that allow unrestricted use of these areas upon decommissioning; and

(2) the reclamation of by-product material disposal areas in accordance with technical criteria delineated in §336.1129 of this title (relating to Technical Requirements); or [.]

(3) the aquifer restoration which is based on the physical characteristics of the mining aquifer; the costs of equipment, labor, and administration; and any other data required under Chapter 331 of this title (relating to Underground Injection Control) for a production area authorization application.

(b) The licensee shall submit this closure plan in conjunction with an environmental report that addresses the expected environmental impacts of the licensee's operation, decommissioning and reclamation, and evaluates alternatives for mitigating these impacts.

(c) The financial assurance [security] shall also cover the payment of the charge for long-term surveillance and control for by-product material disposal areas required by §336.1127(c) of this title (relating to Long-Term Care and Maintenance Requirements).

(d) The licensee's cost estimates must take into account total costs that would be incurred if an independent contractor were hired to perform the decommissioning and reclamation work in establishing specific financial assurance mechanisms. The agency may accept financial assurance mechanisms that have been consolidated with financial or security arrangements established to meet requirements of other federal or state agencies and/or local governing bodies for such decommissioning, decontamination, reclamation, and long-term site surveillance and control, provided such arrangements are considered adequate to satisfy these requirements and that the portion of the security that covers the decommissioning and reclamation of the buildings, site, and by-product material disposal areas, and the long-term funding charge is clearly identified and committed for use in accomplishing these activities. [A licensee or applicant must establish financial assurance under the requirements of 25 TAC Chapter 289 (relating to Radiation Control).]

(e) The financial assurance mechanism shall be continuous for the term of the license and shall be payable to the State of Texas Perpetual Care Account.

(f) The licensee's financial assurance mechanism and the underlying cost estimates will be reviewed annually by the agency to assure that sufficient funds are available for completion of the decommissioning and reclamation plan if the work had to be performed by an independent contractor. The amount of financial assurance must be adjusted to recognize any increases resulting from inflation, changes in engineering plans, activities performed, and any other conditions affecting costs. A licensee must submit a cost estimate report annually for decommissioning and reclamation of the facility in accordance with the decommissioning and reclamation plans by no later than an anniversary date as determined by the executive director. The licensee must provide any increase in the amount of financial assurance within 60 days of a determination of the cost estimate by the executive director.

(g) Financial assurance mechanisms submitted to comply with this subchapter must meet the requirements specified in Chapter 37, Subchapter T of this title (relating to Financial Assurance for Radioactive Substances and Aquifer Restoration) by June 1, 2009. Regardless of whether reclamation is phased through the life of the operation or takes place at the end of operations, an appropriate portion of financial assurance amount as determined by the executive director shall be retained until final compliance with the reclamation plan is determined. This will yield a financial assurance mechanism that is at least sufficient at all times to cover the costs of decommissioning and reclamation of the areas that are expected to be disturbed before the next license renewal.

(h) Self-insurance, or any arrangement that essentially constitutes self-insurance (for example, a contract with a state or federal agency), will not satisfy the financial assurance requirement since this provides no additional assurance other than that which already exists through license requirements.

(i) Licensees or applicants with financial assurance mechanisms issued or submitted in accordance with the requirements of the Texas Department of State Health Services shall submit a replacement mechanism(s) to comply with this subchapter and the requirements of Chapter 37, Subchapter T of this title by June 1, 2009.

**SUBCHAPTER M: LICENSING OF RADIOACTIVE SUBSTANCES PROCESSING AND  
STORAGE FACILITIES**

**§336.1235**

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning

Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed amendment implements SB 1604, 80th Legislature, 2007; THSC, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.412, and 401.2625.

**§336.1235. Financial Assurance for Storage and Processing.**

(a) A licensee must establish financial assurance for decommissioning and any other requirements of this subchapter 60 days prior to the possession of radioactive substances. [A licensee or applicant must establish financial assurance under the requirements of 25 TAC Chapter 289 (relating to Radiation Control).]

(b) In establishing financial assurance, the licensee's cost estimates must take into account total costs that would be incurred if an independent contractor were hired to perform the decommissioning. The amount of financial assurance must be in an amount approved by the agency.

(c) The licensee's financial assurance mechanism and the underlying cost estimates will be reviewed annually by the agency to assure that sufficient funds are available for completion of decommissioning. The amount of financial assurance must be adjusted to recognize any increases resulting from inflation, changes in engineering plans, activities performed, and any other conditions affecting costs. A licensee must submit a cost estimate report annually for decommissioning the facility in accordance with the decommissioning plan by no later than an anniversary date as determined by the

executive director. The licensee must provide any increase in the amount of financial assurance within 60 days of a determination of the cost estimate by the executive director.

(d) Self-insurance, or any arrangement that essentially constitutes self-insurance (for example, a contract with a state or federal agency), will not satisfy the financial assurance requirement because this provides no additional financial assurance other than that which already exists through license requirements.

(e) In addition to the requirements of this subchapter, all licensees authorized under this subchapter and all financial assurance mechanisms submitted to comply with this subchapter are subject to requirements of Chapter 37, Subchapter T of this title (relating to Financial Assurance for Radioactive Substances and Aquifer Restoration) by June 1, 2009.

(f) Licensees with financial assurance mechanisms issued to meet the requirements of the Texas Department of State Health Services must submit a replacement mechanism(s) to comply with this subchapter and the requirements of Chapter 37, Subchapter T of this title by June 1, 2009. Regardless of whether reclamation is phased through the life of the operation or takes place at the end of operations, an appropriate portion of financial assurance amount as determined by the executive director shall be retained until final compliance with the reclamation plan is determined. This will yield a financial assurance mechanism that is at least sufficient at all times to cover the costs of decommissioning and reclamation of the areas that are expected to be disturbed before the next license renewal.

**SUBCHAPTER N: FEES FOR LOW-LEVEL RADIOACTIVE WASTE DISPOSAL**

**§§336.1301, 336.1303, 336.1305, 336.1307, 336.1309, 336.1311, 336.1313, 336.1315, and 336.1317**

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The new sections are also proposed under Texas Health and Safety Code (THSC), Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.245, concerning Compact Waste Disposal Fees; §401.246, concerning Waste Disposal Fee Criteria; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; §401.412, concerning

Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances; and §401.2625, concerning Licensing Authority.

The proposed new sections implement House Bill 1567, 78th Legislature, 2003; Senate Bill 1604, 80th Legislature, 2007; THSC, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.245, 401.246, 401.262, 401.412, and 401.2625.

**§336.1301. Purpose and Scope.**

(a) State and national policy directs that the management of low-level radioactive waste be accomplished by a system of interstate compacts and the development of regional disposal sites. Under federal law, Texas is responsible for managing the low-level radioactive waste generated within its borders. The Texas Low-Level Radioactive Waste Disposal Compact, comprised of the states of Texas and Vermont, has as its disposal facility the compact waste disposal facility licensed under Subchapter H of this chapter. The compact waste disposal facility is expected to be the sole facility for disposal of low-level radioactive waste for generators within the states of Texas and Vermont.

(b) Low-level radioactive waste is generated by essential activities and services that benefit the citizens of the state. For the Compact Waste Facility Disposal, the price of disposing of low-level radioactive waste at the Texas low-level radioactive waste disposal site will be determined by the commission. To protect Texas and Vermont compact states' businesses and services, such as electrical production, medical and university research, and private industries, upon which the public relies, the

commission will establish the maximum disposal rates charged by the licensee in accordance with the rules in this subchapter.

(c) A licensee who receives low-level radioactive waste for disposal pursuant to the Texas Low-Level Radioactive Waste Disposal Compact established under Texas Health and Safety Code, Chapter 403 shall collect a fee to be paid by each person who delivers low-level radioactive waste to the compact waste disposal facility for disposal. This fee shall be based on the commission approved maximum disposal rate, as specified in this subchapter.

**§336.1303. Definitions.**

Terms used in this subchapter are defined in §336.2 of this title (relating to Definitions).

Additional terms used in this subchapter have the following definitions.

(1) **Capital Investment**--The original cost, less depreciation, of property used by and useful to the licensee in providing service. The original cost of property shall be determined at the time the property is dedicated to public use, whether by the licensee that is the present owner or by a predecessor. In this subchapter, "original cost" means the actual money cost or the actual money value of consideration paid other than money.

(2) **Compact**--The Texas Low-Level Radioactive Waste Disposal Compact established under Texas Health and Safety Code, §403.006 and Texas Low-Level Radioactive Waste Disposal Compact Consent Act, Public Law Number 105-236 (1998).

(3) **Compact waste**--Low-level radioactive waste that:

(A) is generated in a host state or a party state; or

(B) is not generated in a host state or a party state, but has been approved for importation to this state by the compact commission under §3.05 of the Texas Low-Level Radioactive Waste Disposal Compact established under Texas Health and Safety Code, §403.006.

(4) **Compact waste disposal facility**--The low-level radioactive waste land disposal facility licensed by the commission under Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) for the disposal of compact waste.

(5) **Extraordinary volume**--Volumes of low-level radioactive waste delivered to a site caused by nonrecurring events, outside normal operations of a generator, that are in excess of twenty thousand cubic feet or twenty percent of the preceding year's total volume at such site, whichever is less.

(6) **Extraordinary volume adjustment**--A mechanism that allocates the potential rate reduction benefits of an extraordinary volume between all generators and the generator responsible for such extraordinary volume as described in §336.1313 of this title (relating to Extraordinary Volume Adjustment).

(7) **Generator**--A person, partnership, association, corporation, or any other entity whatsoever that, as a part of its activities, produces low-level radioactive waste.

(8) **Gross Receipts**--Includes, with respect to an entity or affiliated members, owners, shareholders, or limited or general partners, all receipts from the entity's disposal operations in Texas licensed under this chapter including any bonus, commission, or similar payment received by the entity from a customer, contractor, subcontractor, or other person doing business with the entity or affiliated members, owners, shareholders, or limited or general partners. This term does not include receipts from the entity's operations in Texas, or affiliated members, owners, shareholders, or limited or general partners, for capital reimbursements, bona fide storage, treatment, and processing, and federal or state taxes or fees on waste received uniquely required to meet the specifications of a license or contract.

(9) **Inflation adjustment**--A mechanism that adjusts the maximum disposal rate by a percentage equal to the change in price levels in the preceding period. The adjustment shall be made using an inflation factor derived from the most recent annual Implicit Price Deflator for Gross National Product published by the United States Department of Commerce in its Survey of Current Business.

(10) **Licensee**--The holder of the license authorizing the compact waste disposal facility license issued by the commission under this chapter.

(11) **Maximum disposal rate**--The rate described in §336.1311 of this title (relating to Revisions to Maximum Disposal Rates).

(12) **Reasonable rate of return**--The return on invested capital based on applicable factors, including:

(A) the efforts and achievements of the licensee in conserving resources;

(B) the quality of the licensee's services;

(C) the efficiency of the licensee's operations; and

(D) the quality of the licensee's management.

(13) **Relative Hazard**--The properties of a waste stream for disposal that may present a particular hazard or danger for safe management based on the radioactivity in curies and dose rate as well as special handling requirements due to size, shape, or configuration.

(14) **Revenue Requirement**--Based on a formula which is the capital investment multiplied by the rate of return on capital investment, plus the allowable operating and maintenance cost including other operating cost, closure cost and fees, where all amounts are only those used and useful for the compact facility.

(15) **Volume adjustment**--A mechanism that adjusts the maximum disposal rate in response to material changes in volumes of waste deposited at the site during the preceding period so as to provide a level of total revenues sufficient to recover the costs to operate and maintain the site.

**§336.1305. Commission Powers.**

(a) The commission shall establish rates to be charged by the licensee. In establishing the rates, the commission shall ensure that they are fair, just, reasonable, and sufficient considering the value of the licensee's leasehold and license interests, the unique nature of its business operations, the licensee's liability associated with the site, its investment incurred over the term of its operations, and the reasonable rate of return equivalent to that earned by comparable enterprises.

(b) The commission may use any standard, formula, method, or theory of valuation reasonably calculated to arrive at the objective of prescribing and authorizing fair, just, reasonable, and sufficient rates.

(c) The commission may refer a request for a contested case hearing to the State Office Administrative Hearings on the establishment of a rate under this subchapter.

(d) The commission may audit a licensee's financial records and waste manifest information to ensure that the fees imposed under this chapter are accurately charged and paid. The licensee shall comply with the commission's audit-related requests for information.

(1) To achieve the purposes, proper administration, and enforcement of this chapter, the executive director may conduct audits or investigations of waste disposal rates, payments and fees authorized by Texas Health and Safety Code, Chapter 401, and the veracity of information submitted to the commission.

(2) Each person subject to or involved with an audit or investigation under subsection (a) of this section shall cooperate fully with the audit or investigation by the executive director.

(e) After consideration of initial rate application or revision, the commission shall establish, by rule, the maximum disposal rate and schedule.

(f) The authority to establish the rate under this subchapter maybe delegated to the executive director if the application is not contested.

(g) If good cause exists, the executive director may initiate revision to the maximum disposal rate established under this subchapter, subject to notice and opportunity for a contested case hearing.

Good cause includes, but is not limited to:

(1) there are material and substantial changes in the information used to establish the maximum disposal rate;

(2) information, not available at the time the maximum rate was established, is received by the executive director, justifying a rate revision; or

(3) the rules or statutes on which the maximum disposal rate was based have been changed by statute, rule, or judicial decision after the establishment of the maximum disposal rate.

**§336.1307. Factors Considered for Maximum Disposal Rates.**

Maximum disposal rate adopted by the commission shall consider the following factors and be sufficient to:

(1) allow the licensee to recover costs of operating and maintaining the compact waste disposal facility and a reasonable profit on the operation of that facility;

(2) provide an amount necessary to meet future costs of decommissioning, closing, and postclosure maintenance and surveillance of the compact waste disposal facility and the compact waste disposal facility portion of the disposal facility site;

(3) provide an amount to fund local public projects under Texas Health and Safety Code, §401.244;

(4) provide a reasonable rate of return on capital investment in the facilities used for management, disposal, processing, or treatment of compact waste at the compact waste disposal facility;  
and

(5) provide an amount necessary to pay compact waste disposal facility licensing fees, to pay compact waste disposal facility fees set by rule or statute, to provide financial assurance for the compact waste disposal facility as required by the commission under law and commission rules, and to

reimburse the commission for the salary and other expenses of two or more resident inspectors employed by the commission pursuant to Texas Health and Safety Code, §401.206.

**§336.1309. Initial Determination of Rates and Fees.**

(a) The licensee shall file an application with the executive director to establish initial maximum disposal rates that consider the factors identified in §336.1307 (relating to Factors Considered for Maximum Disposal Rates). The application shall include exhibits, workpapers, summaries, annual reports, cost studies, proposed fees, and other information as requested by the executive director to demonstrate a rate that meets the requirements of this subchapter. In addition, the application shall include revenue requirements for cost recovery from the compact waste disposal facility.

(1) The licensee shall submit a rate filing application package in accordance with the application prescribed by the executive director.

(2) After receipt of the application, the executive director shall review the application and recommend a rate to the commission for approval. In reviewing the application and evaluating the rate information, the executive director may request additional information from the licensee.

(3) The licensee shall provide notice of the application to all known customers that will ship or deliver waste to the compact waste disposal facility and shall provide notice of the application to any person by any method as directed by the executive director. The executive director shall maintain a Web site to inform the public on the process for consideration of the rate application.

(b) After notice and opportunity for a contested case hearing, the commission shall establish the initial maximum disposal rates that may be charged by the licensee. Upon request for a contested case hearing by any affected waste generator in the Texas Compact, the executive director shall directly refer an application to establish maximum disposal rates to the State Office Administrative Hearings for a contested case hearing.

(c) In the initial rate proceeding, the commission also shall determine the factors necessary to calculate the inflation adjustment, volume adjustment, extraordinary volume adjustment, and relative hazard.

**§336.1311. Revisions to Maximum Disposal Rates.**

(a) The maximum disposal rates that a licensee may charge generators shall be determined in accordance with this section, and §336.1307 of this title (relating to Factors Considered for Maximum Disposal Rates). The rates shall include all charges for disposal services at the site.

(b) Initially, the maximum disposal rates shall be the initial rates established pursuant to §336.1309 of this title (relating to Initial Determination of Rates and Fees).

(c) Subsequently, the maximum disposal rates shall be adjusted in January of each year to incorporate inflation adjustments and volume adjustments. Such adjustments shall take effect unless the commission authorizes that the adjustments take effect according to an alternate schedule.

(d) Subsequently, a licensee may also file for revisions to the maximum disposal rates due to:

(1) changes in any governmentally imposed fee, surcharge, or tax assessed on a volume or a gross receipts basis against or collected by the licensee, including site closure fees, perpetual care and maintenance fees, business and occupation taxes, site surveillance fees, commission regulatory fees, taxes, and a tax or payment in lieu of taxes authorized by the state to compensate the county in which a site is located for that county's legitimate costs arising out of the presence of that site within that county;  
or

(2) factors outside the control of the licensee such as a material change in regulatory requirements regarding the physical operation of the site.

(e) For revisions to maximum disposal rates, the application must meet the requirements in §336.1309(a) of this title.

(f) For any revisions to the maximum disposal rate, including inflation and volume adjustments, the licensee shall provide notice to its customers concurrent with the filing.

**§336.1313. Extraordinary Volume Adjustment.**

(a) In establishing the extraordinary volume adjustment, unless the licensee and generator of the extraordinary volume agree to a contract disposal rate, one-half of the extraordinary volume delivery shall be priced at the maximum disposal rate and one-half shall be priced at the licensee's incremental cost to

receive the delivery. Such incremental cost shall be determined in the initial rate proceeding.

(b) For purposes of the subsequent calculation of the volume adjustment, one-half of the total extraordinary volume shall be included in the calculation.

**§336.1315. Revenue Statements.**

(a) The licensee shall, on or before March 1st of each year, file with the commission an audited financial statement showing its gross receipts for the preceding calendar year. A validation of payments made in §336.103(f) and (g) of this title (relating to Schedule of Fees for Subchapter H Licenses) must also be included.

(b) The financial statement shall be prepared in accordance with Generally Acceptable Accounting Principles and audited by a Certified Public Accounting (CPA) firm. The audited financial statement shall include an Auditor's Report from the CPA indicating an "unqualified" opinion of the licensee's financial statements.

**§336.1317. Contracted Disposal Rates.**

(a) At any time, a licensee may contract with any person to provide a contract disposal rate that is lower than the maximum disposal rate.

(b) A contract or contract amendment shall be submitted to the executive director for approval at least 30 days before its effective date. If the executive director takes no action within 30 days of filing, the contract or amendment shall go into effect according to its terms. Each contract filing shall be accompanied with documentation to show that the contract does not result in discrimination between generators receiving like and contemporaneous service under substantially similar circumstances and provides for the recovery of all costs associated with the provision of the service.