

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** March 22, 2013

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

From: Brent Wade, Deputy Director
Office of Waste

Subject: Consideration of a Petition for Rulemaking

Docket No.: 2013-0402-RUL

Project No.: 2013-021-PET-NR

Who Submitted the Petition:

The petition was filed with the Texas Commission on Environmental Quality on February 12, 2013, by Barrett & Associates, PLLC on behalf of Uranium Energy Corp (petitioner).

What the Petitioner Requests:

The petitioner requests that the commission amend 30 TAC §336.1115(e), related to decommissioning standards for release of outdoor areas for unrestricted use at uranium mining sites. Specifically, the petitioner requests the removal of existing language in §336.1115(e)(3) to eliminate the uranium soil concentration standard. With this change, the radium soil concentration standard, radium vegetation concentration, and radium benchmark dose approach would remain as the decommissioning standards for releasing outdoor areas at uranium mining sites for unrestricted use.

The petitioner notes that the existing language is not consistent with the applicable requirements of the United States Nuclear Regulatory Commission (NRC) and comments submitted by the NRC when the current rule language was transferred from the Texas Department of State Health Services in 2008. The petitioner explains that the NRC comments required the use of the dose/risk based assessment in the radium benchmark dose approach and not the uranium soil concentration as the applicable criteria for releasing outdoor areas after decommissioning at uranium mining sites. The petitioner explains that the uranium soil concentration standard is redundant to the radium benchmark dose approach and could unnecessarily increase the costs for decommissioning.

Recommended Action and Justification:

The executive director recommends the initiation of a rulemaking. The executive director's staff has reviewed the issues raised in the petition and the regulatory history of the current rule that establishes the uranium soil concentration standard for the decommissioning of uranium mining sites. The petition raises a legitimate issue about whether the current rule language is consistent with applicable federal requirements that can be addressed and considered in a commission rulemaking proceeding.

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Applicable Law:

- Texas Government Code, §2001.021, which establishes the procedures by which an interested person may petition a state agency for the adoption of a rule
- 30 TAC §20.15, which provides such procedures specific to the commission
- Texas Health and Safety Code, §§401.101, 401.051, and 401.104
- Texas Water Code, §5.103

Agency contacts:

Tony Gonzalez, Rule Project Manager, 239-6471, Radioactive Materials Division
Don Redmond, Staff Attorney, 239-0612
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Attachment

Petition

cc: Chief Clerk, 2 copies
Executive Director's Office
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