

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** June 13, 2014

**Thru:** Bridget C. Bohac, Chief Clerk  
Richard A. Hyde, P.E., Executive Director

**From:** Brent Wade, Deputy Director  
Office of Waste

**Subject:** Consideration of a Petition for Rulemaking

**Docket No.:** 2014-0708-RUL

**Project No.:** 2014-025-PET-NR

### **Who Submitted the Petition:**

On May 16, 2014, the Texas Commission on Environmental Quality received a petition for rulemaking filed by Representative Lon Burnam, otherwise known as the "petitioner."

### **What the Petitioner Requests:**

The petitioner requests that the commission modify 30 TAC §336.731(b) to provide that costs of water removal operations at low-level radioactive waste disposal facilities are required.

### **Recommended Action and Justification:**

The Executive Director recommends denial because this rulemaking is rather narrowly defined and the existing rules and statutes already provide for the cost estimates and transparency the petitioner seeks.

The reason rule 30 TAC §336.731(b) regarding environmental monitoring does not include detailed cost estimates is simply because they are extensively required in other statutes and rules. These cost estimates are available to the public and presented at an open meeting before the commission annually. They are also subject to annual updates. The cost estimates are comprehensive and form the entire basis of financial assurance for immediate and long term measures known as corrective action, closure, post-closure and most other forms of environmental remediation. The numerous existing rules requiring specificity and transparency are 30 TAC §§37.9050(d)(4), 336.736(b)(c), 336.738(b), 336.708(a)(10), and 336.335(e)(2)(E). By statute at Texas Health and Safety Code (THSC), §401.152(a), the State of Texas funds and financial assurance are only triggered in a corrective action, such as the water removal scenario offered by the petitioner, if "the license holder managing the low-level radioactive waste is unable to remove the threat." In most cases as the Legislature clearly states, the corrective action costs are to be exhausted by the license holder first, not the State of Texas.

Transparency and public participation are already an essential element of financial assurance and corrective action. As the rules and statutes referenced above, the

Commissioners

Page 2

June 13, 2014

Re: Docket No. 2014-0708-RUL

commission will review the financial assurance and cost estimates annually at a public meeting and make annual reports available. Every year TCEQ staff review and reexamine cost estimates for adjustments to financial assurance. The petitioner's suggested rule language to include such a specific remedy and limits to costs estimates parameters may create an unintended consequence by limiting flexibility by responding agencies or by excluding costs borne by the license holder.

In summary, the corrective action, remediation, closure, post-closure and any other remedy to address leaks or contamination at the site is well established in current statute and laws, which give the license holder and the TCEQ the flexibility needed in a transparent and open process.

**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
- 30 TAC §336.731(b), 30 TAC §§37.9050(d)(4), 336.736(b)(c), 336.738(b), 336.708(a)(10), 336.335(e)(2)(E)
- THSC, §401.152(a).

**Agency contacts:**

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**Attachment**

Petition

Commissioners

Page 3

June 13, 2014

Re: Docket No. 2014-0708-RUL

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Marshall Coover  
Tucker Royall  
Pattie Burnett  
Office of General Counsel  
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