

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §§39.303,39.305, 39.307, 39.309 and new §39.313, concerning Public Notice. Section 39.313 is adopted with a change to the proposed text as published in the April 24, 1998, issue of the *Texas Register* (23 TexReg 3997). Sections 39.303,39.305, 39.307, and 39.309 are adopted without changes and will not be republished.

EXPLANATION OF ADOPTED RULE

The purpose of these rules is to remove commission rule language related to the source material licensing and by-product disposal jurisdiction transferred to the Texas Department of Health (TDH) by Senate Bill (SB) 1857, 75th Legislature, 1997; to incorporate revisions and additions which are needed to maintain compatibility with the rules of the United States Nuclear Regulatory Commission (NRC); and to continue with agency-wide regulatory reform efforts to simplify language and requirements.

Compatibility of the commission's rules with the federal program is necessary to preserve the status of Texas as an Agreement State under Title 10 Code of Federal Regulations Part 150 and the "Articles of Agreement between the United States Atomic Energy 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."

In §39.313 (relating to Public Notification and Public Participation), the first sentence is amended to remove an incorrect reference and replace it with the correct one. The removed incorrect reference to "§336.603 of this title (relating to Radiological Criteria for Unrestricted Use)" would have made this requirement more stringent than the federal rule and in disagreement with the cross reference to this

notice requirement in §336.611 (relating to Public Notification and Public Participation). This incorrect reference has been replaced with the correct reference to “§336.609 of this title (relating to Alternate Criteria for License Termination).”

FINAL REGULATORY IM PACT ANALYSIS

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the act, and it does not meet any of the four applicability requirements listed in §2001.0225(a).

Although this rule is to protect the environment and reduce the risk to human health from environmental exposure, this is not a major environmental rule because it does not 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.

In addition, this rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or adopt a rule solely under the general powers of the agency. The rule adds federal requirements that are necessary to maintain compatibility with the rules of the NRC.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code §2007.043. The following is a summary of that Assessment. The specific purpose of the rules is to remove commission rule language related to the source material licensing and by-product disposal jurisdiction transferred to the TDH by SB 1857, 75th Legislature, 1997, to incorporate revisions and additions which are needed to maintain compatibility with the rules of the NRC, and to continue with agency-wide regulatory reform efforts to simplify language and requirements.

Compatibility of the commission's rules with the federal program is necessary to preserve the status of Texas as an Agreement State under Title 10 Code of Federal Regulations Part 150 and the "Articles of Agreement between the United States Atomic Energy Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to the Atomic Energy Act §274 of 1954, as Amended." The rules will substantially advance this specific purpose by removing commission rule language related to the source material licensing and by-product disposal jurisdiction transferred to the TDH and by incorporating into commission rules the new federal requirements contained in "Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials, Clean Air Act", 61 Fed. Reg. 65120, December 10, 1996, effective January 9, 1997 and "Radiological Criteria for License Termination", 62 Fed. Reg. 39058, July 21, 1997, effective August 20, 1997. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because they primarily implement less stringent federal decommissioning requirements. Section 336.501 extends the deadline to apply for a license to decommission from January 1, 1999, to January 1, 2000. If these existing, unlicensed sites decommission before January 1, 2000, owners or operators will avoid license application and annual

fees. For both licensed and unlicensed disposal sites, new alternatives for decommissioning without meeting the criteria for unrestricted use are offered in new sections §336.607 (relating to Criteria for License Termination under Restricted Conditions) and §336.609 (relating to Alternate Criteria for License Termination). A site using one of these alternatives may save on decommissioning cost.

Also, the following exceptions to the application of Chapter 2007 of the Texas Government Code listed in Texas Government Code §2007.003(b) apply to these rules: Section 2007.003(b)(4)--an action that is reasonably taken to fulfill an obligation mandated by federal law.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the adopted rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adoption is not subject to the Coastal Management Program.

HEARING AND COMMENTERS

A public hearing was not held for this rulemaking. The comment period closed May 26, 1998. No comments were received.

STATUTORY AUTHORITY

The amendments and new sections are adopted under the Texas Radiation Control Act, Texas Health and Safety Code §§401.011, 401.051, and 401.412, and Texas Water Code §5.103, which give the

commission the authority to adopt rules necessary to carry out its responsibilities to regulate and license the disposal of radioactive substances.

SUBCHAPTER F : PUBLIC NOTICE OF RADIOACTIVE

MATERIAL LICENSE APPLICATIONS

§§39.303, 39.305, 39.307, 39.309, 39.313

§39.303. Notice of License Applications Upon Completion of Technical Review.

(a) (No change.)

(b) For an application for minor amendment to a license issued under Chapter 336, Subchapter F of this title (relating to Alternative Methods of Disposal of Radioactive Material), notice shall be mailed in accordance with the requirements of this subchapter. The deadline to file public comment, protests, or hearing requests is ten days after mailing.

§39.305. Mailed Notice for Radioactive Material Licenses.

When notice by mail is required under this subchapter, the chief clerk shall mail notice to:

(1) the mayor and health authorities of the city in which the facility is or will be located;

(2) the county judge and health authorities of the county in which the facility is or will be located;

(3) any person who submitted a written request in advance to be notified of any licensing action on this type of license;

(4) the applicant;

(5) each owner of property adjacent to the proposed site. For the purposes of determining property ownership under this subsection, the applicant shall provide the chief clerk the names of the relevant landowners from the county tax rolls that are available no more than 30 days before the date of newspaper publication of the notice; and

(6) any other person the chief clerk or executive director may elect to include.

§39.307. Published Notice.

(a) For applications under Chapter 336, Subchapter F of this title (relating to Alternative Methods of Disposal of Radioactive Material), when notice is required to be published under this subchapter, the applicant shall publish notice at least once in a newspaper of largest general circulation in the county in which the facility is located.

(b) - (c) (No change.)

§39.309. Notice of Contested Case Hearing on Application.

(a) (No change.)

(b) For applications under Chapter 336, Subchapter F of this title (relating to Licensing of Alternative Methods of Disposal), notice shall be mailed no later than 30 days before the hearing. For applications under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste), notice shall be mailed no later than 31 days before the hearing.

§39.313. Public Notification and Public Participation.

Upon the receipt of a license termination plan or decommissioning plan from the licensee, or a proposal by the licensee for release of a site under §336.607 of this title (relating to Criteria for License Termination under Restricted Conditions) or §336.609 of this title (relating to Alternate Criteria for License Termination), or whenever the commission deems notice to be in the public interest, the commission shall:

(1) notify and solicit comments from:

(A) local and state governments in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning; and

(B) the United States Environmental Protection Agency for cases where the licensee proposes to release a site under §336.609 of this title (relating to Alternate Criteria for License Termination); and

(2) publish a notice in the *Texas Register* and in a forum, such as local newspapers, letters to state or local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site, and solicit comments from affected parties.