

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§39.303,39.305, 39.307, 39.309 and new §39.313, concerning Public Notice.

EXPLANATION OF PROPOSED RULE

The purpose of these rules is to implement 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."

On July 20, 1997, SB 1857 transferred jurisdiction over licensing of source material and disposal of by-product material from the commission to the Texas Department of Health (TDH).

Section 39.303(b) (relating to Notice of License Applications Upon Completion of Technical Review) is proposed to be amended to delete a reference to the source material licensing and by-product disposal jurisdiction transferred to the TDH by SB 1857.

Section 39.305(1) and (5) (relating to Mailed Notice for Radioactive Material Licenses) are proposed to be amended and §39.305(6) is proposed to be deleted to remove language concerning the source material licensing and by-product disposal jurisdiction transferred to the TDH by SB 1857 and to simplify the overall language; old paragraph (7) is also proposed to be renumbered to (6) due to the deletion of old paragraph (6).

Section 39.307 (relating to Public Notice) is proposed to be amended to remove a reference to the source material licensing and by-product disposal jurisdiction transferred to the TDH by SB 1857 and to simplify the publication requirement by requiring the notice to just be published in the newspaper that has the largest circulation in the county in which the facility is located. It is also proposed to delete the requirement for additional advertisement outside of the notice section of the newspaper because it is overly burdensome, not required statutorily, and inconsistent with other commission notice requirements.

Section 39.309 (b) and (c) (relating to Notice of Contested Case Hearing on Application) are proposed to be amended to remove language concerning the source material licensing and by-product disposal jurisdiction transferred to the TDH by SB 1857. Section 39.309(d) is proposed to be deleted to ensure consistency and eliminate a redundancy with §39.11(13) (relating to Text of Public Notice).

New §39.313 (relating to Public Notification and Public Participation) is derived from NRC's new 10 CFR §20.1405 and is proposed to maintain compatibility with the federal program.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections as proposed are in effect, there will be no significant fiscal implications for state government as a result of administration or enforcement of the rules. There are no fiscal implications for units of local government, except those that may operate an inactive radioactive disposal site subject to the provisions of these sections. For these local governments, the fiscal implications of these sections will be equivalent to those for any affected public or private entity.

PUBLIC BENEFIT

Mr. Minick has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be more efficient decommissioning of inactive radioactive material disposal sites and consistency between state and federal regulations. Compliance with the proposed state regulations will result in no significant increase in costs to affected parties that would not otherwise result from compliance with the existing federal regulations proposed for incorporation and may result in a cost decrease. Cost savings anticipated to any person, including any small business, required to comply with these sections as proposed is proportionate to the savings for a larger business.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed 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 Nuclear Regulatory Commission.

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 make federal decommissioning requirements less stringent. 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 §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 executive director has reviewed the proposed 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 proposal is not subject to the Coastal Management Program.

SUBMITTAL OF COMMENTS

Written comments may be mailed to Bettie Bell, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments must be received by May 25, 1998 and should reference Rule Log Number 97154-336-WS. Comments received by 5:00 p.m. on that date will be considered by the commission prior to any final action on the proposal. For further information, please contact Kathy Vail at (512) 239-6637.

STATUTORY AUTHORITY

The amendments and new sections are proposed 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.

The amendments and new sections implement Health and Safety Code Chapter 401 (relating to Radioactive Materials and Other Sources of Radiation).

**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) [or Subchapter G of this title (relating to Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities)], 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[, or, for licenses issued under Chapter 336, Subchapter G of this title (relating to Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities), the

mayor and health authorities of each incorporated city whose city limits are within five highway miles of the site of the facility];

(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) [for applications under Chapter 336, Subchapter F of this title (relating to Licensing of Alternative Methods of Disposal) or Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste),]each owner of property adjacent to the proposed site[; or, for licenses under Chapter 336, Subchapter G of this title, owners of property within 1,000 feet of the perimeter of the proposed license area]. 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) for applications under Chapter 336, Subchapter G of this title, the chief executive of each political subdivision and special district levying taxes upon all or any part of the site of the

facility and each member of the Texas Legislature in whose district the facility is or will be located;
and]

(6)[(7)] 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)[or Subchapter G of this title (relating to Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities)], 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 [or will be]located[, or, if no newspaper is published in the county or counties in which the facility is or will be located, in a newspaper of general circulation in each county adjacent to the county in which the facility is located. In addition, in the same edition that the notice is published, the applicant shall publish an advertisement outside the notice section of the newspaper that directs the reader to the notice section for the details of the proposed licensing action].

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

§39.309. Notice of Contested Case Hearing on Application.

(a) The requirements of this section apply when an application is referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(b) For applications under Chapter 336, Subchapter F of this title (relating to Licensing of Alternative Methods of Disposal)[or Subchapter G of this title (relating to Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities)], 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.

[(c) For applications under Chapter 336, Subchapter G of this title, if a hearing has been set at the time the notice of application is provided, the notice of hearing may be combined with the notice of application.]

[(d) A written environmental analysis, if required, shall be made available to the public no later than 31 days before the date of 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 §336.603 of this title (relating to Radiological Criteria for Unrestricted Use) or §336.607 of this title (relating to Criteria for License Termination under Restricted Conditions), 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 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.