

The Texas Natural Resource Conservation Commission (commission) proposes the repeal of §§336.104, 336.108, 336.217, 336.357, 336.366, 336.514, and 336.601-336.636, concerning Radioactive Substance Rules.

EXPLANATION OF PROPOSED RULES

Section 336.104 (relating to Schedule of Fees for Subchapter G Licenses) is proposed to be repealed because it concerns the source material licensing and by-product disposal jurisdiction transferred to the Texas Department of Health (TDH) by Senate Bill (SB) 1857.

Section 336.108 (relating to Proration of Annual Fee Adjustments) is proposed to be repealed because it concerns §336.104, which is proposed to be repealed.

Section 336.217 (relating to Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas) is proposed to be repealed. Its language is proposed to be moved, with revisions, to become new §336.519 (relating to Expiration and Termination of Licenses) and new §336.613 (relating to Additional Requirements). This will separate and clarify expiration and the termination of licenses requirements from the decommissioning requirements.

Section 336.357 (relating to Surface Contamination Limits for Facilities and Equipment) is proposed to be repealed and moved to new §336.605 (relating to Surface Contamination Limits for Facilities, Equipment, and Materials) to consolidate the decommissioning requirements.

Section 336.366 (relating to Appendix I. Soil and Vegetation Contamination Limits for Selected Radionuclides) is proposed to be repealed because it is no longer necessary with the United States Nuclear Regulatory Commission new 10 CFR §20.1402 (relating to Radiological Criteria for Unrestricted Use) and should be removed to maintain compatibility with the federal rule.

Old §336.514 (relating to Financial Assurance and Recordkeeping for Decommissioning) is proposed to be repealed and its modified language reused in proposed new §336.514 (relating to Financial Assurance for Decommissioning) to narrow the focus of the provision to financial assurance requirements and to clarify those requirements. The recordkeeping portion in §336.514(f) is moved to proposed new §336.515 (relating to Recordkeeping for Decommissioning).

Old §§336.601-336.636, which make up Subchapter G (relating to Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities), are proposed to be repealed due to the transfer of the source material jurisdiction to the TDH by SB 1857.

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 own or 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, except

governments are not required to submit financial assurance. They may provide a statement of intent containing a cost estimate for decommissioning and indicate that funds will be obtained when necessary.

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).

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 Section 274 of the Atomic Energy Act 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 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 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. The commission requests the comments on the results of the review of its rules be clearly distinguished from comments on the proposed changes in order to facilitate their assessment. For further information, please contact Kathy Vail at (512) 239-6637.

STATUTORY AUTHORITY

These repeals 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.

These repeals implement Health and Safety Code Chapter 401 (relating to Radioactive Materials and Other Sources of Radiation).

SUBCHAPTER B : RADIOACTIVE SUBSTANCE FEES

§§336.104, 336.108

These repeals 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.

These repeals implement Health and Safety Code Chapter 401 (relating to Radioactive Materials and Other Sources of Radiation).

§336.104. Schedule of Fees for Subchapter G Licenses.

§336.108. Proration of Annual Fee Adjustments.

**SUBCHAPTER C : ADDITIONAL APPLICATION, OPERATION, AND
LICENSE REQUIREMENTS**

§336.217

STATUTORY AUTHORITY

The repeal is 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 repeal implements Health and Safety Code Chapter 401 (relating to Radioactive Materials and Other Sources of Radiation).

§336.217. Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas.

SUBCHAPTER D : STANDARDS FOR PROTECTION AGAINST RADIATION

§336.357 and §336.366

STATUTORY AUTHORITY

These repeals 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.

These repeals implement Health and Safety Code Chapter 401 (relating to Radioactive Materials and Other Sources of Radiation).

§336.357. Surface Contamination Limits for Facilities and Equipment.

§336.366. Appendix I. Soil and Vegetation Contamination Limits for Selected Radionuclides.

**SUBCHAPTER F : LICENSING OF ALTERNATIVE METHODS OF
DISPOSAL OF RADIOACTIVE MATERIAL**

§336.514

STATUTORY AUTHORITY

The repeal is 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 repeal implements Health and Safety Code Chapter 401 (relating to Radioactive Materials and Other Sources of Radiation).

§336.514. Financial Assurance and Recordkeeping for Decommissioning.

**SUBCHAPTER G : LICENSING REQUIREMENTS FOR SOURCE MATERIAL
(URANIUM OR THORIUM) RECOVERY AND PROCESSING FACILITIES**

§§336.601-336.606, 336.613-336.629, 336.636

STATUTORY AUTHORITY

These repeals 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.

These repeals implement Health and Safety Code Chapter 401 (relating to Radioactive Materials and Other Sources of Radiation).

§336.601. Scope and General Provisions.

§336.602. Definitions.

§336.603. Filing of Application.

§336.604. General Requirements for Issuance of a License.

§336.605. Special Requirements for Issuance of a License.

§336.606. Issuance of License.

§336.613. Site and Design Requirements.

§336.614. Groundwater Protection.

§336.615. Secondary Groundwater Protection.

§336.616. Corrective Action Program.

§336.617. Other Considerations for Groundwater Protection.

§336.618. Seepage Control Systems.

§336.619. Tailings or Waste Disposal System.

§336.620. Ore Stockpiling.

§336.621. Disposal Area Cover and Closure.

§336.622. Closure Completion Milestones and Schedule.

§336.623. Monitoring Requirements.

§336.624. Airborne Emission and Discharge Control Requirements.

§336.625. Daily Inspections of Tailings or Waste Retention Systems.

§336.626. Requirement Alternatives.

§336.627. Financial Assurance Requirements.

§336.628. Long-Term Care and Surveillance Requirements.

§336.629. Land Ownership of Tailings or Waste Disposal Sites.

§336.636. Appendix A. Maximum Concentrations for Groundwater Protection.