

The Texas Natural Resource Conservation Commission (commission) proposes new §7.118, concerning Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions.

EXPLANATION OF PROPOSED RULES

The primary purpose of new rule §7.118 is to reflect the transfer of the source material licensing and by-product disposal jurisdiction from the commission to the Texas Department of Health (TDH) by Senate Bill (SB) 1857, 75th Legislature, 1997, in an amended Memorandum of Understanding (MOU).

New §7.118 is proposed to adopt by reference TDH rule 25 Texas Administrative Code (TAC) §289.101, Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions, which is amended to reflect the transfer of the source material and by-product disposal jurisdiction to the TDH. The full text of the amended MOU is proposed for adoption in Texas Department of Health rule 25 TAC §289.101 (July 31, 1998, issue of the Texas Register (24 TexReg 7707)). Also, an amended §336.11 and new §331.16 are proposed that will reference the updated MOU and state where to obtain a copy.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the new rule section as proposed is in effect, there will be no significant fiscal implications for state government. There are also no fiscal implications for units of local government.

PUBLIC BENEFIT

Mr. Minick has also determined that for the first five years the new rule section as proposed is in effect the public benefit anticipated will be a clearer understanding between the state agencies on their jurisdictions and on areas of cooperation. The proposed new section will result in no increase in costs to affected parties. Significant cost savings are not anticipated to any person or business, large or small.

ECONOMIC ANALYSIS FOR SMALL BUSINESS

The commission has reviewed the proposed rulemaking in light of Texas Government Code, §2006.002, requirements and has determined that there will be no economic effect on small businesses because the proposed rulemaking adds no regulatory burden, but only reflects the transfer of the existing source material licensing and by-product disposal jurisdiction from the commission to the TDH by SB 1857, 75th Legislature, 1997.

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 MOU assists the state in the implementation of federal rules.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for this rulemaking pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to reflect the transfer of the source material licensing and by-product disposal jurisdiction from the commission to the TDH by SB 1857, 75th Legislature, 1997, in an amended understanding between the state agencies and in related actions. The rules will substantially advance this specific purpose by amending an MOU, by transferring the complete text of the amended MOU to TDH rule 25 Texas Administrative Code (TAC) §289.101, by adopting the MOU by reference, by cross referencing the MOU in uranium and injection well program rules, and by removing obsolete MOUs, concerning municipal sewage sludge and concerning non-hazardous wastewater that contains radioactive constituents, adopted by reference in 30 TAC §305.521(1) and (2), respectively.

Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because they merely pertain to an understanding between state agencies on their joint jurisdiction and on areas of cooperation. The amended understanding places no requirements on the regulated community.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission 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 September 21, 1998 and should reference Rule Log Number 97172-007-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. The agencies that are parties to the understanding plan to review and respond to comments jointly.

STATUTORY AUTHORITY

This new section is proposed under Texas Water Code, §5.104, and Texas Health and Safety Code, §361.016 and §401.069, which require the commission to adopt by rule any MOU or a revision to an MOU. The rulemaking is also 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 and §27.019, which give the commission the authority to adopt rules necessary to carry out its responsibilities to regulate and license the disposal of radioactive substances and to regulate injection wells.

The new section implements Texas Health and Safety Code, Chapter 401 (relating to Radioactive Materials and Other Sources of Radiation) and Texas Water Code, Chapter 27 (relating to Injection Wells).

CHAPTER 7

MEMORANDA OF UNDERSTANDING

§7.118

§7.118. Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions.

The Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission regarding radiation control functions and mutual cooperation is adopted by reference as in complete text in Texas Department of Health rule 25 TAC §289.101 (relating to Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions). If a copy of this document cannot be obtained from the Internet, a copy can be requested from the Texas Natural Resource Conservation Commission, Chief Clerk's Office, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3300.

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §305.521, concerning Adoption of Memoranda of Understanding by Reference.

EXPLANATION OF PROPOSED RULES

The primary purpose of the amendments is to delete obsolete memoranda of understanding (MOUs). One concerns municipal sewage sludge, and the other concerns non-hazardous wastewater that contains radioactive constituents; these MOUs are adopted by reference in 30 Texas Administrative Code (TAC) §305.521(1) and (2), respectively. The MOU concerning municipal sewage sludge is obsolete. The MOU concerning non-hazardous wastewater that contains radioactive constituents has been superseded by the Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions. (An update of this MOU was proposed in the July 31, 1998, issue of the *Texas Register* (24 TexReg 7707)). The remaining MOU in §305.521 between the Texas Department of Transportation and the Texas Water Commission (a predecessor to the Texas Natural Resource Conservation Commission) concerns primarily the assessment of water quality impacts resulting from certain transportation projects and is still applicable. Another purpose of these amendments to §305.521 is to change the name of the commission office that will provide a copy of the remaining MOU from the Legal Division to the Office of the Chief Clerk.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period these amendments as proposed are in effect, there will be no fiscal implications for state government. There are also no fiscal implications for units of local government.

PUBLIC BENEFIT

Mr. Minick has also determined that for the first five years these amendments as proposed are in effect the public benefit anticipated will be the removal of obsolete understandings among the state agencies on their jurisdictions from commission rules. The proposed amendments will result in no increase in costs to affected parties. Also, cost savings are not anticipated to any person or business, large or small.

ECONOMIC ANALYSIS FOR SMALL BUSINESS

The commission has reviewed the proposed rulemaking in light of Texas Government Code, §2006.002, requirements and has determined that there will be no economic effect on small businesses because the proposed rulemaking adds no regulatory burden, but only deletes two obsolete jurisdiction and cooperation agreements between state agencies.

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 MOU assists the state in the implementation of federal rules.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for this rulemaking pursuant to Texas Government Code, §2007.043. The following is a summary of that Assessment. The specific purpose of the rulemaking is to reflect the transfer of the source material licensing and by-product disposal jurisdiction from the commission to the TDH by SB 1857, 75th Legislature, 1997, in an amended understanding between the state agencies and in related actions. The rules will substantially advance this specific purpose by amending an MOU, by transferring the complete text of the amended MOU to TDH rule 25 Texas Administrative Code (TAC) §289.101, by adopting the MOU by reference, by cross referencing the MOU in uranium and injection well program rules, and by removing obsolete MOUs, concerning municipal sewage sludge and concerning non-hazardous wastewater that contains radioactive constituents, adopted by reference in 30 TAC §305.521(1) and (2), respectively.

Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because they merely pertain to an understanding between state agencies on their joint jurisdiction and on areas of cooperation. The amended understanding places no requirements on the regulated community.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission 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 September 21, 1998 and should reference Rule Log Number 97172-305-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 are proposed under the Texas Water Code, §5.104, which requires the commission to adopt by rule any MOU related to the regulation of water.

The amendments implement Texas Water Code, Chapter 5 (relating to the Texas Natural Resource Conservation Commission).

CHAPTER 305

CONSOLIDATED PERMITS

SUBCHAPTER N : MEMORANDUM OF UNDERSTANDING

§305.521

§305.521. Adoption of Memorandum [Memoranda] of Understanding by Reference.

The February, 1992 Memorandum of Understanding between the Texas Department of Transportation and the Texas Water Commission (a predecessor to the Texas Natural Resource Conservation Commission, which concerns primarily the assessment of water quality impacts resulting from certain transportation projects [following memoranda of understanding between the commission and other state agencies, required to be adopted by rule as set forth in the Texas Water Code, §5.104], is [are] adopted by reference. A copy of the document is [Copies of these documents are] available upon request from the Texas Natural Resource Conservation Commission, Office of the Chief Clerk [Legal Division], P. O. Box 13087, Austin, Texas 78711-3087, (512) 239-3300 [239-0600].

[(1) the memorandum of understanding (effective April 1, 1989) between the Texas Department of Health, the Texas Air Control Board, and the Texas Water Commission, which concerns the regulation and management of municipal sewage sludge;]

[(2) the memorandum of understanding between the Texas Department of Health and the Texas Water Commission, which concerns the regulation and management of non-hazardous wastewater that contains radioactive constituents; and]

[(3) the memorandum of understanding (effective February, 1992) between the Texas Department of Transportation and the Texas Water Commission, which concerns primarily the assessment of water quality impacts resulting from certain transportation projects.]

The Texas Natural Resource Conservation Commission (commission) proposes new §331.16, concerning Memorandum of Understanding Between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions.

EXPLANATION OF PROPOSED RULES

The primary purpose of the amendments is to reflect the transfer of the source material licensing and by-product disposal jurisdiction from the commission to the Texas Department of Health (TDH) by Senate Bill (SB) 1857, 75th Legislature, 1997, in an amended Memorandum of Understanding (MOU) and in related actions.

The jurisdiction transfer required amendment of the MOU to incorporate provisions regarding “in situ” uranium mining that had been previously removed from Chapter 331 (relating to Underground Injection Control). The “in situ” uranium mining provisions are contained in the proposed amended Memorandum of Understanding Between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions (see July 31, 1998, issue of the *Texas Register* (24 TexReg 7707)).

New §331.16 is being proposed to reference the proposed amended MOU as it will appear in complete text in TDH rule 25 Texas Administrative Code (TAC) §289.101 and be adopted by reference in the commission’s new §7.118 proposed in this issue of the *Texas Register*.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the new section as proposed is in effect, there will be no significant fiscal implications for state government. There are also no fiscal implications for units of local government.

ECONOMIC ANALYSIS FOR SMALL BUSINESS

The commission has reviewed the proposed rulemaking in light of Texas Government Code, §2006.002, requirements and has determined that there is no economic effect on small businesses because the proposed rulemaking only reflects the transfer of the source material licensing and by-product disposal jurisdiction from the commission to the TDH by SB 1857, 75th Legislature, 1997.

PUBLIC BENEFIT

Mr. Minick has also determined that for the first five years the new section as proposed is in effect the public benefit anticipated will be a clearer understanding among the state agencies on their jurisdictions and on areas of cooperation. The proposed new section will result in no increase in cost to affected parties. Significant cost savings are not anticipated to any person or business, large or small.

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 MOU assists the state in the implementation of federal rules.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for this rulemaking pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to reflect the transfer of the source material licensing and by-product disposal jurisdiction from the commission to the TDH by SB 1857, 75th Legislature, 1997, in an amended understanding between the state agencies and in related actions. The rules will substantially advance this specific purpose by amending an MOU, by transferring the complete text of the amended MOU to TDH rule 25 Texas Administrative Code (TAC) §289.101, by adopting the MOU by reference, by cross-referencing the MOU in uranium and injection well program rules, and by removing obsolete MOUs, concerning municipal sewage sludge and concerning non-hazardous wastewater that contains radioactive constituents, adopted by reference in 30 TAC §305.521(1) and (2), respectively.

Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because they merely pertain to an understanding between state agencies on their joint

jurisdiction and on areas of cooperation. The amended understanding places no requirements on the regulated community.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission 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 September 21, 1998 and should reference Rule Log Number 97172-331-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. The agencies that are parties to the MOU plan to review and respond to comments jointly.

STATUTORY AUTHORITY

This new section is proposed under Texas Water Code, §5.104, and Texas Health and Safety Code, §361.016 and §401.069, which require the commission to adopt by rule any MOU or a revision to an MOU. The rulemaking is also 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 and §27.019, which give the commission the authority to adopt rules necessary to carry out its responsibilities to regulate and license the disposal of radioactive substances and to regulate injection wells.

The new section implements Texas Health and Safety Code, Chapter 401 (relating to Radioactive Materials and Other Sources of Radiation) and Texas Water Code, Chapter 27 (relating to Injection Wells).

CHAPTER 331

UNDERGROUND INJECTION CONTROL

SUBCHAPTER A : GENERAL PROVISIONS

§331.16

§331.16. Memorandum of Understanding Between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions.

The Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions is adopted by reference in §7.118 of this title (related to Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions). However, the full text of the memorandum of understanding can be found only in Texas Department of Health rule 25 TAC §289.101 (relating to Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions). If a copy of this document is required and cannot be obtained from the Internet, a copy can be requested from the Texas Natural Resource Conservation Commission, Chief Clerk's Office, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3300.

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §336.11, concerning Appendix A. Memorandum of Understanding Between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions.

EXPLANATION OF PROPOSED RULES

The purpose of the amendments is to reflect the transfer of the source material licensing and by-product disposal jurisdiction from the commission to the Texas Department of Health (TDH) by Senate Bill (SB) 1857, 75th Legislature, 1997, in an amended Memorandum of Understanding (MOU) and in related actions.

Section §336.11 (relating to Appendix A. Memorandum of Understanding Between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions) is proposed to be amended to delete “Appendix A” from the title, to cite the proposed new §7.118 adopting the updated MOU by reference to TDH rule (see July 31, 1998, issue of the *Texas Register* (24 TexReg 7707) to state where to obtain a copy of the MOU, and to delete the old MOU text (that was updated and transferred to TDH rule 25 Texas Administrative Code (TAC) §289.101).

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the amended section as proposed is in effect, there will be no significant fiscal implications for state government. There are also no fiscal implications for units of local government.

PUBLIC BENEFIT

Mr. Minick has also determined that for the first five years the amended section as proposed is in effect the public benefit anticipated will be a clearer understanding between the state agencies on their jurisdictions and on areas of cooperation. The proposed amendments will result in no significant increase in costs to affected parties. Significant cost savings are not anticipated to any person or business, large or small.

ECONOMIC ANALYSIS FOR SMALL BUSINESS

The commission has reviewed the proposed rulemaking in light of Texas Government Code, §2006.002, requirements and has determined that there is no economic effect on small businesses because the proposed rulemaking only reflects the transfer of the source material licensing and by-product disposal jurisdiction from the commission to the TDH by SB 1857, 75th Legislature, 1997.

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 MOU assists the state in the implementation of federal rules.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for this rulemaking pursuant to Texas Government Code, §2007.043. The following is a summary of that Assessment. The specific purpose of the rulemaking is to reflect the transfer of the source material licensing and by-product disposal jurisdiction from the commission to the TDH by SB 1857, 75th Legislature, 1997 in an amended understanding between the state agencies and in related actions. The rules will substantially advance this specific purpose by amending an MOU, by transferring the complete text of the amended MOU to TDH rule 25 Texas Administrative Code (TAC) §289.101, by adopting the MOU by reference, by cross referencing the MOU in uranium and injection well program rules, and by removing obsolete MOUs, concerning municipal sewage sludge and concerning non-hazardous wastewater that contains radioactive constituents, adopted by reference in 30 TAC §305.521(1) and (2), respectively.

Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because they merely pertain to an understanding between state agencies on their joint

jurisdiction and on areas of cooperation. The amended understanding places no requirements on the regulated community.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission 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 September 21, 1998 and should reference Rule Log Number 97172-336-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. The agencies that are parties to the understanding plan to review and respond to comments jointly.

STATUTORY AUTHORITY

This amended section is proposed under Texas Water Code, §5.104, and Texas Health and Safety Code, §361.016 and §401.069, which require the commission to adopt by rule any MOU or a revision to an MOU. The rulemaking is also 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 and §27.019, which give the commission the authority to adopt rules necessary to carry out its responsibilities to regulate and license the disposal of radioactive substances and to regulate injection wells.

The amended section implements Texas Health and Safety Code, Chapter 401 (relating to Radioactive Materials and Other Sources of Radiation) and Texas Water Code, Chapter 27 (relating to Injection Wells).

CHAPTER 336

RADIOACTIVE SUBSTANCE RULES

SUBCHAPTER A : GENERAL PROVISIONS

§336.11

§336.11. [Appendix A.] Memorandum of Understanding Between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions.

The Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions is adopted by reference in §7.118 of this title (related to Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions). However, the full text of the memorandum of understanding can be found only in Texas Department of Health rule 25 TAC §289.101 (relating to Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions). If a copy of this document is required and cannot be obtained from the Internet, a copy can be requested from the Texas Natural Resource Conservation Commission, Chief Clerk's Office, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3300.

[(a) Purpose. The purpose of this Memorandum of Understanding (MOU) is to implement and coordinate the responsibilities and define the respective duties of the agencies in the regulation of

sources of radiation in accordance with Texas Health and Safety Code (code), §401.414 and §402.1512, to provide a consistent approach to avoid duplication, and to delineate areas of separate jurisdiction.]

[(b) Jurisdiction.]

[(1) In accordance with the code, §401.412, the Texas Natural Resource Conservation Commission (TNRCC) has primary jurisdiction to regulate and issue licenses for the disposal of radioactive substances, except for naturally occurring radioactive material (NORM) originating from oil and gas production and exploration activities, defined as "oil and gas NORM waste" in the code, §401.003(27). For purposes of this MOU, disposal means isolation or removal of radioactive substances from mankind's environment without intent to retrieve those radioactive substances later. The term does not include emissions and discharges in accordance with 25 TAC §289.202 (relating to Standards for Protection Against Radiation) of the Texas Department of Health (TDH). "Radioactive substance" includes byproduct material, radioactive material, radioactive waste, source material, sources of radiation, and special nuclear material as are defined by the code, §401.003. In accordance with the code, §401.412, the TNRCC also has primary jurisdiction to regulate and issue licenses for source material recovery and processing, including the disposal of byproduct material, as defined in the code, §401.003(3)(B).]

[(2) The TDH has jurisdiction to regulate and license the possession, receipt, use, handling, transfer, transport, and storage of all radioactive material, excluding the recovery and processing of source material, processing of byproduct material as defined in the code, §401.003(3)(B),

and the disposal of radioactive substances. The TDH has sole jurisdiction to regulate and register or license the use or service of electronic products as defined in the code, §401.003(9). The code, §401.106, gives the TDH the authority, through rulemaking by the Texas Board of Health, to exempt a source of radiation or a kind of use or user from licensing or registration requirements.]

[(3) The receipt, storage, and/or processing of radioactive substances received by a TNRCC licensee at a radioactive substance disposal facility for the explicit purpose of disposal at that facility shall be regulated by the TNRCC. All other uses of radioactive material (e.g., well logging, industrial radiography, gauging devices, etc.) at a TNRCC-licensed radioactive substance disposal facility shall be regulated by the TDH.]

[(4) Processing of radioactive substances at a TNRCC-licensed radioactive substance disposal facility by persons other than the TNRCC licensee shall be authorized only by the TDH under a license or under reciprocal recognition of an out-of-state license and shall be in accordance with the jurisdiction of the TDH.]

[(5) The receipt, storage, and processing of radioactive material at TDH-licensed facilities whose primary activity is not disposal of radioactive substances but which are also licensed by the TNRCC for disposal of radioactive substances shall be regulated by the TDH.]

[(c) Relationship with the United States Nuclear Regulatory Commission (NRC) and the Texas Radiation Advisory Board (TRAB) regarding rulemaking. The TNRCC and the TDH agree to work

together to ensure that complete regulation is maintained for sources, uses, and users of radiation. As appropriate, the TDH and the TNRCC agree to coordinate rulemaking activities between the two agencies and the TRAB to ensure consistency of regulation. Each agency agrees to coordinate rulemaking activities which pertain to the requirements of the Agreement between the State of Texas and the NRC, as amended, and to ensure the compatibility of rules and guidelines with federal regulatory programs. Each agency agrees to coordinate on providing information on any proposed legislation relating to the regulation of radioactive substances.]

[(d) Emergency preparedness.]

[(1) The State of Texas is required by federal laws and regulations to have trained personnel always available for emergency response training, drills, exercises, and actual emergency response at fixed nuclear facilities. The code, §401.066, requires the TDH to implement these activities.]

[(2) The TDH and the TNRCC will coordinate personnel availability for emergency planning and response activities. Each agency is authorized to collect an annual fee from the operators of fixed nuclear facilities in the state for expenses arising from emergency response activities, including training.]

[(3) The TDH will inform the TNRCC in a timely manner of all required exercises, drills and training. The TNRCC will ensure that all technical personnel who work in the radiation

program attend the emergency response training coordinated by the TDH. The TNRCC shall notify the TDH of changes in the employment status of all the appropriate radiation personnel. In the event of an emergency, the appropriate TDH and TNRCC radiation staff will be available for emergency response under the direction of the TDH staff and in accordance with Annex D of the State of Texas Emergency Management Plan.]

[(e) Management of radioactive wastewaters.]

[(1) The TNRCC is the state agency having the jurisdiction in accordance with the Texas Water Code, Chapter 26, for the discharge of any waste or wastewaters, including radioactive wastewaters, into or adjacent to waters in the state, except for those wastes regulated by the Railroad Commission of Texas. No discharge is allowed unless authorized by the TNRCC or by another state agency having jurisdiction over the activity. The TNRCC has responsibility for issuance of permits and for enforcement of the terms and conditions of permits, rules, and/or orders which concern the treatment and discharge of radioactive wastewaters.]

[(2) The TNRCC shall consult with the TDH with regard to regulation and management of radioactive wastewaters and may not adopt any rules or engage in any management activities that are in conflict with state or federal laws and rules relating to regulation of radioactive wastewaters. The TNRCC shall notify the TDH, Bureau of Radiation Control, when an application is received for a treatment and/or disposal permit for radioactive wastewaters. The TNRCC shall provide the TDH with a copy of the wastewater treatment and/or disposal permit application during the

technical review. The TDH shall provide the TNRCC with the appropriate permit limits for the radioactive component of wastewater discharges and cumulative limits for disposal sites, if land application is contemplated by the application. No separate license from the TDH shall be required to authorize that discharge. The TDH may provide the TNRCC with other suggestions related to management of radioactive wastewaters.]

[(3) TDH licenses regarding facilities requiring a wastewater permit shall contain a provision that licensees must comply with the TNRCC permit requirements. TNRCC permits governing facilities requiring a radioactive materials license from the TDH shall contain a provision that permittees must comply with TDH license requirements.]

[(f) Financial security instruments. The TNRCC will review and evaluate the financial security instruments for radioactive substance disposal sites and uranium recovery facilities in accordance with its jurisdiction. The TDH will review and evaluate the financial security instruments for licenses in accordance with its jurisdiction. The radiation and perpetual care fund will be available for use by both agencies for receipt of financial security as appropriate.]

[(g) Low-level waste health surveillance survey. In accordance with code, §402.058, the TDH and the TNRCC agree to coordinate efforts, in conjunction with the Texas Low-Level Radioactive Waste Disposal Authority and the local public health officials, in the development of a health surveillance survey for the population in the vicinity of a radioactive waste disposal site.]

[(h) Dosimetry program and meter calibration. The TDH may provide personnel monitoring services, thermoluminescent dosimeters for environmental monitoring, and radiation survey instrument calibration for TNRCC personnel in the radiation program in accordance with an approved contract for those services. The TDH and the TNRCC may renegotiate this contract each biennium.]

[(i) Mutual assistance. Each agency may request from the other agency short-term assistance of personnel or resources when there is need for such assistance, such as for performing close-out surveys, training, environmental monitoring, technical reviews, and technical support at contested hearings. Each agency will provide the requested assistance to the extent possible without disrupting its own required activities.]

[(j) Maintenance of files on known disposal sites and contaminated facilities. The TDH agrees to assist the TNRCC in maintaining files on known locations in the State at which radioactive material has been disposed of and at which soil and facilities are contaminated and in maintaining information on inspection reports related to these locations. Each agency agrees to maintain files of sites and facilities regulated in accordance with its respective jurisdictions.]

[(k) Relationship with other memoranda of understanding. This MOU supersedes those found at 25 TAC §289.123 (relating to Licensing of Uranium Recovery Facilities), 25 TAC §289.125 (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste), and §305.521(2) of this title (relating to Adoption of Memoranda of Understanding by Reference).]

[(l) Radioactive substances exempted or released for unrestricted use. Once a source of radiation is exempted from regulation by the Texas Board of Health in accordance with code §401.106 or meets release criteria for unrestricted use in accordance with the provisions of the Texas Regulations for Control of Radiation, its disposal is not subject to further regulation as a radioactive substance by the TNRCC.]

[(m) Miscellaneous.]

[(1) The TNRCC and the TDH agree to revise their respective rules and procedures as needed to implement this MOU.]

[(2) Agency representatives shall meet as needed to discuss possible changes in this MOU and to encourage increased communication between the agencies.]

[(3) Nothing in this MOU shall be construed to reduce the statutory jurisdiction of either agency.]

[(4) If any provision of this MOU is held to be invalid, the remaining provisions shall not be affected thereby.]

[(n) Effective date. This amended MOU will take effect when signed by both agencies and remain in effect until rescinded by formal action of either agency.]