

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §39.1, Applicability; §39.5, General Provisions; §39.11, Text of Public Notice; §39.13, Mailed Notice; §39.17, Notice of Minor Amendment; §39.701, Applicability; §39.703, Notice of License Applications Upon Completion of Technical Review; §39.707, Published Notice; §39.709, Notice of Contested Case Hearing on Application. The TNRCC is also proposing the repeal of Subchapter F, §39.301, Notice of Declaration of Administrative Completeness; §39.302, Applicability; §39.303, Notice of License Applications Upon Completion of Technical Review; §39.305, Mailed Notice for Radioactive Material Licenses; §39.307, Published Notice; §39.309, Notice of Contested Case Hearing on Application; §39.311, Proof and Certification of Notice; and §39.313, Public Notification and Public Participation.

#### **BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES**

The changes proposed to this chapter are part of a larger proposal to revise the agency's radiation control rules. This rule package has three major goals: (1) implement House Bill (HB) 1172, 76th Legislature, 1999, and its amendments to the Texas Health and Safety Code (THSC); (2) implement the recommendations of the TNRCC's Business Process Review Permit Implementation Team (BPR-PIT) to provide for consistency between the administrative procedures of the radiation control program and the other permitting programs of the agency; and (3) improve readability and understanding by reorganizing 30 TAC Chapter 336 (relating to Radioactive Substance Rules), putting its requirements into plain English and eliminating its redundancies and conflicts.

Changes to implement HB 1172 are: (1) amending the definition of low-level radioactive waste to be compatible with the United States Nuclear Regulatory Commission's (NRC's) definition; (2) incorporating the TNRCC's new authority to exempt from application of a rule; (3) adding an exemption to continue or expand on-site low-level radioactive waste disposal begun before September 9, 1989; and (4) adding exemptions from radioactive material licensing requirements for facilities participating in the Voluntary Cleanup Program or Superfund cleanups.

The BPR-PIT changes are part of an agency-wide effort to make programs consistent where feasible. The agency's management has mandated the consistency effort to make agency processes more efficient and "user friendly." Most of the license application process requirements in Chapter 336 can be modified to be more consistent with the requirements of the other permitting programs within the agency. The TNRCC expects a consistent application process to be especially helpful for persons who have multiple permits/licenses from the TNRCC or to staff during the review of consolidated permit applications. Major proposed changes are as follows: (1) that the radiation control program begins using the agency's definitions for major and minor amendments; and (2) the radiation control program license application process will be moved for the most part from Chapter 336 to Chapter 281 (relating to Applications Processing) and Chapter 305 (relating to Consolidated Permits) and amended to be consistent with agency administrative procedures.

The amendments and repeals in Chapter 39 are to incorporate the HB 1172 newly defined term "low-level radioactive waste" and to propose that only Subchapters H and M of this chapter be applicable to radioactive material licenses in the future because Subchapter F is obsolete.

## SECTION BY SECTION DISCUSSION

### Subchapter A - Applicability

Section 39.1 is proposed to be amended by replacing reference to Subchapters “B-F” with “B-E,” by adding the word “and.” Section 39.1 is also proposed to be amended by deleting “and Public Notice for Radioactive Material Licenses” because there were no radioactive material licenses pending on September 1, 1999 (the first part of the sentence states it applies to radioactive material applications that were declared administratively complete before September 1, 1999) and Subchapter F is proposed to be repealed; to state which subchapters are proposed to be applicable to radioactive material licenses; and by deleting paragraph (7) because the whole chapter is no longer proposed to apply to radioactive material licenses; and by renumbering the last paragraph to account for the deletion of the previous paragraph.

Section 39.5 is proposed to be amended. Section 39.5(c) is proposed to be amended by deleting the last sentence that states, “This subsection does not apply to applications for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules).” Section 39.5(f), (g), and (h) is proposed to be amended by deleting the last sentence that states “This subsection does not apply to applications for radioactive material licenses under Chapter 336 of this title.” This amendment is proposed because it was previously proposed that Subchapter A no longer apply and only Subchapters H and M would apply to radioactive material licenses.

Section 39.11(13) is proposed to be deleted because it was previously proposed that only Subchapters H

and M would apply to radioactive material licenses and associated formatting changes made to §39.11(11) and (12).

Section 39.13(b) is proposed to be deleted because it was previously proposed that only Subchapters H and M would apply to radioactive material licenses, with subsection (a) becoming an implied subsection (a).

Section 39.17(b)(2) is proposed to be deleted because it was previously proposed that only Subchapters H and M would apply to radioactive material licenses. Conforming grammatical changes are proposed to §39.17(b)(1).

#### Subchapter F - Public Notice of Radioactive Material License Applications

Subchapter F is proposed to be repealed because there were no radioactive material license applications pending on September 1, 1999 and Subchapter F formerly applied to applications before September 1, 1999.

#### Subchapter M - Public Notice for Radioactive Material Licenses

Section 39.701 is proposed to be amended to delete "that is declared administratively complete on or after September 1, 1999" because this date is past, and there were no applications still pending on September 1, 1999. Minor grammatical changes are also proposed to §39.701.

Section 39.703 is proposed to be amended. The section title is proposed to be changed to "Notice of

Completion of Technical Review” to simplify it. Section 39.703(a) is proposed to be amended by adding “Low-Level” to conform with this newly defined term in HB 1172.

Section 39.707(b) is proposed to be amended by adding “Low-Level” to conform with this newly defined term in HB 1172.

Section 39.709(b) is proposed to be amended by adding “Low-Level” to conform with this newly defined term in HB 1172.

#### FISCAL NOTE

Jeff Grymkoski, Director, Strategic Planning and Appropriations, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for the commission or other units of state and local government as a result of administration or enforcement of the proposed amendments.

The amendments and repeals in this rulemaking are to incorporate the defined term “low-level radioactive waste” in lieu of “radioactive waste” in accordance with HB 1172, 76th Legislature, 1999, (an Act relating to the definition of low-level radioactive waste) and to propose that certain public notice subchapters be applicable to radioactive material license applications in the future because another subchapter is now obsolete and is being proposed for repeal.

#### PUBLIC BENEFIT

Mr. Grymkoski has also determined that for each year of the first five years the proposed rules are in effect, the anticipated public benefit from enforcement of and compliance with the proposed rules will be enhanced compliance by making notice rules applicable to all the agency's other permitting programs applicable to radioactive materials licensing for consistency for the regulated community and the agency.

There are no additional economic or administrative costs anticipated to any person, business, or facility required to comply with the proposed rules because no new public notice requirements are added that are not already required by current state law.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSES

No adverse economic effects are anticipated to any small businesses or micro-businesses as a result of implementing the proposed amendments.

The amendments and repeals in this rulemaking are to incorporate the defined term "low-level radioactive waste" in lieu of "radioactive waste" in accordance with HB 1172, 76th Legislature, 1999 and to propose that certain public notice subchapters be applicable to radioactive material license applications in the future because another subchapter is now obsolete and is being proposed for repeal.

There are no additional economic or administrative costs anticipated to any small or micro-businesses required to comply with the proposed rules because no new public notice requirements are added, not

already required by current state law.

#### 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 that statute. “Major environmental rule” means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may 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. The proposed amendments to Chapter 39 are not anticipated to 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 because there are no new requirements added that are not already required by current state law.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these proposed rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rules is to incorporate the HB 1172 defined term “low-level radioactive waste” in lieu of “radioactive waste” and to propose that only Subchapters H and M of this chapter be applicable to radioactive material licenses in the future because Subchapter F is now obsolete and is being proposed for repeal. Promulgation and enforcement of these rules will not burden private real property which is

the subject of the rules because there are no new notice requirements added that are not also currently required by state law.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the proposed rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), 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 CMP.

#### PUBLIC HEARING

A public hearing on this proposal will be held in Austin on July 6, 2000, at 10:00 a.m. in Building F, Room 2210 at the Texas Natural Resource Conservation Commission Complex, located at 12100 Park 35 Circle. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs, who are planning to attend the hearing, should contact the Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3078 or faxed to (512) 239-4808.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 1999-057-336-WS. Comments must be received by 5:00 p.m., July 17, 2000. For further information or questions concerning this proposal, please contact Hygie Reynolds, Waste Permits Division, at (512) 239-6825.

#### STATUTORY AUTHORITY

The amendments are proposed under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b)-(e), 401.106(b) and (c), 401.201-401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

These amendments implement THSC, Chapter 401, relating to Radioactive Materials and Other Sources of Radiation.

**SUBCHAPTER A: APPLICABILITY AND GENERAL PROVISIONS**

**§§39.1, 39.5, 39.11, 39.13, 39.17**

**§39.1. Applicability.**

Any permit applications listed below that are declared administratively complete before September 1, 1999 are subject to Subchapter A of this chapter (relating to Applicability and General Provisions), and Subchapters B-E [B-F] of this chapter (relating to Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications, Public Notice of Air Quality Applications, and Public Notice of Other Specific Applications[, and Public Notice for Radioactive Material Licenses]), as applicable. Any permit applications listed below that are declared administratively complete on or after September 1, 1999 are subject to Subchapter H of this chapter (relating to Applicability and General Provisions), and Subchapters I-M of this chapter (relating to Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, Public Notice of Air Quality Applications, Public Notice of Injection Well and Other Specific Applications, and Public Notice for Radioactive Material Licenses), as applicable. All consolidated permit applications are subject to Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits), regardless of when they were declared administratively complete. This chapter applies to:

(1)-(6) (No change.)

[~~(7)~~ applications for radioactive material licenses under Chapter 336 of this title  
(relating to Radioactive Substance Rules);]

(7) [(8)] applications for consolidated permit processing and consolidated permits  
processed under Texas Water Code, Chapter 5, Subchapter J, and Chapter 33 of this title (relating to  
Consolidated Permit Processing).

**§39.5. General Provisions.**

(a)-(b) (No change.)

(c) When this chapter requires notice by mail, notice by hand delivery may be substituted.  
Mailing is complete upon deposit of the document, enclosed in a prepaid, properly addressed wrapper,  
in a post office or official depository under the care and custody of the United States Postal Service. If  
hand delivery is by courier-receipted delivery, the delivery is complete upon the courier taking  
possession. [This subsection does not apply to applications for radioactive material licenses under  
Chapter 336 of this title (relating to Radioactive Substance Rules).]

(d)-(e) (No change.)

(f) When this chapter requires an applicant to publish notice, the applicant must file an affidavit  
with the chief clerk certifying facts that constitute compliance with the requirement. The deadline to

file the affidavit is the day of the public meeting for notice of public meeting, two days before a public hearing for notice of a public hearing, and 30 days after the last publication for other published notices. For notice of a public meeting, the applicant must also submit the affidavit to the executive director no later than the day of the public meeting. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with the requirement to publish notice. [This subsection does not apply to applications for radioactive material licenses under Chapter 336 of this title.]

(g) When this chapter requires notice to be published according to this subsection, the applicant shall publish notice in a newspaper of the largest general circulation that is published in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, and the application concerns an application for a new or amended municipal solid waste permit, and publication of notice of intent, notice of draft permit, or notice of hearing, then the applicant shall publish notice in a newspaper of the largest general circulation in the county in which the facility is located or proposed to be located and in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located, and such notice may be satisfied by one publication if the publishing newspaper meets both circulation requirements. [This subsection does not apply to applications for radioactive material licenses under Chapter 336 of this title.]

(h) When this chapter requires notice be broadcast according to this subsection, the applicant shall broadcast notice of the application on one or more local radio stations that broadcast to an area that includes all of the county in which the facility is located. The executive director may require that the broadcasts be made to an area that also includes contiguous counties. [This subsection does not apply to applications for radioactive material licenses under Chapter 336 of this title.]

**§39.11. Text of Public Notice.**

When notice by publication or by mail is required by this chapter, the text of the notice must include:

(1)-(10) (No change.)

(11) a statement of whether the executive director has prepared a draft permit; and

(12) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies\_ [; and]

[(13) for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules), if applicable, a statement that a written environmental analysis on the

application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted.]

**§39.13. Mailed Notice.**

[(a)] When this chapter requires mailed notice under this section, the chief clerk shall mail notice to:

(1)-(14) (No change.)

[(b)] This section does not apply to applications for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules).]

**§39.17. Notice of Minor Amendment.**

(a) (No change.)

(b) Subsection (a) of this section does not apply to[:]

[(1)] applications seeking a minor amendment or minor modification of a wastewater discharge permit. For such applications, the notice requirements are in §39.151(c) of this title (relating to Application for Wastewater Discharge Permit, Including Application for the Disposal

of Sewage Sludge or Water Treatment Sludge).

[(2) applications for a minor amendment to radioactive material licenses. For such applications, the notice requirements are specified in Subchapter F of this chapter (relating to Public Notice of Radioactive Material License Applications).]

**SUBCHAPTER F: PUBLIC NOTICE OF RADIOACTIVE MATERIAL**

**LICENSE APPLICATIONS**

**§§39.301-39.303, 39.305, 39.307, 39.309, 39.311, 39.313**

**STATUTORY AUTHORITY**

The repeals are proposed under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b)-(e), 401.106(b) and (c), 401.201-401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

These repeals implement THSC, Chapter 401, relating to Radioactive Materials and Other Sources of Radiation.

**§39.301. Notice of Declaration of Administrative Completeness.**

**§39.302. Applicability.**

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

**§39.305. Mailed Notice for Radioactive Material Licenses.**

**§39.307. Published Notice.**

**§39.309. Notice of Contested Case Hearing on Application.**

**§39.311. Proof and Certification of Notice.**

**§39.313. Public Notification and Public Participation.**

**SUBCHAPTER M: PUBLIC NOTICE FOR RADIOACTIVE  
MATERIAL LICENSES**

**§§39.701, 39.703, 39.707, 39.709**

**STATUTORY AUTHORITY**

The amendments are proposed under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b)-(e), 401.106(b) and (c), 401.201-401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

These amendments implement THSC, Chapter 401, relating to Radioactive Materials and Other Sources of Radiation.

**§39.701. Applicability.**

Any license application under Chapter 336 of this title (relating to Radioactive Substance Rules) [that is declared administratively complete on or after September 1, 1999] is subject to this subchapter and applicable requirements under Subchapter [subchapter] H of this chapter (relating to Applicability and General Provisions).

**§39.703. Notice of [License Applications Upon] Completion of Technical Review.**

(a) When the executive director has completed the technical review of an application for a license, major amendment, or renewal of a license issued under Chapter 336 of this title (relating to Radioactive Substance Rules) or for a minor amendment issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste), notice shall be mailed and published under this subchapter. The deadline to file public comment, protests, or hearing requests is 30 days after publication.

(b) (No change.)

**§39.707. Published Notice.**

(a) (No change.)

(b) For applications for a new license, renewal license, or major amendment to a license issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste), when notice is required to be published under this subchapter, the applicant shall publish notice in a newspaper published in the county or counties in which the facility is or will be located. If no newspaper is published in the county or counties in which the facility is or will be located, a written copy of the notice shall be posted at the courthouse door and

five other public places in the immediate locality to be affected. The notice shall be posted for at least 31 days.

(c) (No change.)

**§39.709. Notice of Contested Case Hearing on Application.**

(a) (No change.)

(b) For applications under Chapter 336, Subchapter F of this title (relating to Alternative Methods of Disposal of Radioactive Material), 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 Low-Level Radioactive Waste), notice shall be mailed no later than 31 days before the hearing.

(c) (No change.)