

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §305.1, Scope and Applicability; §305.2, Definitions; §305.42, Application Required; §305.45, Contents of Application for Permit; §305.54, Additional Requirements for Radioactive Material Licenses; §305.62, Amendment; §305.65, Renewal; §305.67, Revocation and Suspension upon Request or Consent; §305.121, Applicability; §305.123, Reservation in Granting Permit; §305.125, Standard Permit Conditions; and 305.127, concerning Conditions To Be Determined for Individual Permits.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The changes proposed to Chapter 305 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 rest of the agency; and (3) improve readability and understanding by reorganizing 30 TAC Chapter 336 (relating to Radioactive Substance Rules), by 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 permit application requirements of the rest of the agency. The TNRCC expects a consistent application process to be especially helpful for persons who have multiple permits/licenses from the TNRCC or are seeking consolidated permits. Major proposed changes are: (1) that the radiation control program will begin using the agency's definitions for major and minor amendments; and (2) the radiation control program's 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) with technical requirements remaining in Chapter 336 and amended to be consistent with agency administrative procedures.

Chapter 305 is proposed to be amended to make conforming changes per HB 1172, implement recommendations of the agency's BPR-PIT, and to improve the readability and understanding of the agency's radiation control program rules.

As a point of clarification regarding the use of the terms "radioactive substance" and "radioactive material," the agency chooses to use the term "radioactive material" over that of "radioactive substance" wherever possible. The term "radioactive substance" was created to refer collectively to

radioactive materials that were under the TNRCC's disposal jurisdiction, excluding materials not within the TNRCC's jurisdiction. The definition under THSC, §401.003(19), which excludes oil and gas NORM, was not changed by the legislature to exclude byproduct material when jurisdiction over disposal of byproduct material was transferred to the TDH. In defining the TNRCC's jurisdiction under THSC, §401.412(a), byproduct material as defined by THSC, §401.003(3)(B) is specifically excluded. Therefore, use of the terms "radioactive material" and "radioactive substance" in this proposal does not include disposal of byproduct material under TDH's disposal jurisdiction, or oil and gas NORM waste under Railroad Commission of Texas jurisdiction. In TNRCC practice, the term "radioactive substance" has been used interchangeably with "radioactive material." Within the bounds of the TNRCC's jurisdiction, the agency interprets "radioactive substance" and "radioactive material" to have the same meaning.

SECTION BY SECTION DISCUSSION

Subchapter A - General Provisions

Section 305.1(a) is proposed to be amended to add "and the Texas Health and Safety Code, Chapters 361 and 401" and to delete "and the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7" to apply Chapter 305's requirements for applications, permits, and actions by the commission to activities regulated under THSC, Chapter 401, Radioactive Materials and Other Sources of Radiation and to update the citation for the Texas Solid Waste Disposal Act, Chapter 361. This proposed amendment will provide for more consistency between the radiation control program and other waste programs regulated by the agency, as recommended by the agency's BPR-PIT without changing the substantive requirements currently in place. The commission invites comment on this change.

Section 305.2 is proposed to be amended to incorporate definitions contained in THSC, §401.003 and §401.004, as part of the proposal to make the radiation control program's license application process consistent with the process used in the other permitting programs within the agency, in accordance with the agency's BPR-PIT recommendations. Amendments are also proposed to correct the citation for the Texas Solid Waste Disposal Act. The definition of "Permit" is proposed to be amended to add "for radioactive material disposal" and "a radioactive materials disposal license," to include radioactive material licenses, which would also be consistent with the definition of "Permit" in the agency's general definitions applicable to more than one regulatory program chapter in Chapter 3. The terms "permit" and "license" may be used interchangeably throughout the agency's rules. The definition of "Radioactive material" is proposed to be amended to add "A naturally occurring or artificially produced solid, liquid, or gas that emits radiation spontaneously" and delete "A material which is identified as a radioactive material under Texas Civil Statutes, Article 4590f, as amended, and the rules adopted by the Texas Board of Health pursuant thereto." This amendment updates the definition and makes it consistent with the definition of this term in THSC, §401.003(18).

Subchapter C - Application for Permit

Section 305.42(c) is proposed to be amended to add "low-level radioactive waste disposal" to clarify that licenses issued under Chapter 336, Subchapter H are low-level radioactive waste disposal licenses, and to implement HB 1172 addition of "low-level" to "radioactive waste." It is also amended to correct the cross reference to Chapter 336, Subchapter H to reflect its concurrently proposed new title.

Section 305.45 is proposed to be amended. Section 305.45(a) is proposed to be amended to delete “Except for applications under Chapter 336 of this title (relating to Radioactive Substance Rules), each” to extend the agency’s standard application content requirements to radioactive material license applications. The changes proposed throughout this section are intended to consolidate most of the radioactive material license application program requirements with those of the other permitting programs. Chapter 336 will be concurrently amended to move the application process information to Chapter 305, except most technical requirements will remain in Chapter 336. Section 305.45(a)(8)(B)(ii) is proposed to be amended to delete “and” and add “and radiological” to include radiological properties in the list of properties that must be characterized for applications related to waste or injected fluids. In addition the term “radioactive” has been changed to “radiological” to reflect proper usage. Section 305.45(a)(8)(C) is proposed to be amended to add “§305.54 of this title (relating to Additional Requirements for Radioactive Material Licenses), §336.207 of this title (relating to General Requirements for the Issuance of a License), §336.513 of this title (relating to Technical Requirements for Active Disposal Sites), §336.617 of this title (relating to Technical Requirements for Inactive Disposal Sites), §336.705 of this title (relating to Content of Applications),” to reference all of the technical information required to be submitted in the supplemental technical report for radioactive material license applications. Section 305.45(c) is proposed to be repealed as redundant with proposed preceding amendment.

Section 305.54 is proposed to be amended to be consistent with the effort to improve the application process by moving radioactive material license application requirements to Chapter 305 except most technical requirements will remain in Chapter 336. Section 305.54(b), relating to technical

requirements, is proposed to be deleted as redundant with the requirements of §336.513, §336.617 and Chapter 336, Subchapter H. The remaining existing subsections are proposed to be renumbered accordingly. Section 305.54(d) is moved unchanged from §336.201(b), concurrently proposed for repeal, as part of the effort to improve applications processing by consolidating application requirements in Chapter 305. Proposed new §305.54(e) is moved from §336.201(c), which is concurrently proposed for repeal. New subsection (e) is unchanged with the exception of extending the requirement to include amendments, as part of the effort to improve applications processing by consolidating application requirements in Chapter 305. Proposed new §305.54(f) is moved from §336.201(d), which is concurrently proposed for repeal, essentially unchanged with the exception of deleting an obsolete date and a redundancy.

Subchapter D - Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits

Section 305.62 is proposed to be amended. Section 305.62(b) is proposed to be amended to change “§§305.41-305.53 of this title” to “Subchapter C of this chapter” to include radioactive material license application requirements in amendment applications, as part of the effort to improve applications processing by consolidating application requirements in Chapter 305.

The types of amendments specified in proposed to be repealed §336.2(58)(A)(i)-(iii) are incorporated into the proposed §305.62(c)(1). Currently, the radiation control licensing program uses different definitions from the rest of the agency’s permitting programs for major and minor amendment. The TNRCC’s BPR-PIT, as part of its recommendation to make the permitting process consistent within the

agency wherever possible, recommended that the definitions for major and minor amendments in Chapter 336 be repealed and that the radiation control licensing program begin using the major and minor amendment definitions found in Subchapter D of Chapter 305.

According to existing §305.62(c) which is herein proposed to be applicable to radiation control licensing, a major amendment is “an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit.” A minor amendment is “an amendment to improve or maintain the permitted quality or method of disposal of waste, or injection of fluid if there is neither a significant increase of the quantity of waste or fluid to be discharged or injected nor a material change in the pattern or place of discharge or injection. A minor amendment includes any other change to a permit issued under this chapter that will not cause, or relax a standard or criterion which may result in, a potential deterioration of quality of water in the state.”

Under existing Chapter 336, major amendments to Subchapter F licenses include transfers of a license to another person, enlargement of the disposal area, the addition of another disposal area and substantial changes to the nature of the waste or the method of disposal. All of these types of changes, except for a license transfer, would be considered significant changes to a permit by other agency permitting programs, would be processed as major amendments, and are therefore proposed to be repealed. Transfers do not “cause, or relax a standard or criterion which may result in, a potential deterioration of quality of water in the state.” Because the rest of the permitting programs treat transfers separately or as minor amendments, the commission proposes to process transfers for Subchapters F and G licenses under §305.64 (Transfer of Permits). Also, under existing Chapter 336, amendments to

licenses for which an environmental analysis is required, are currently classified as major amendments. Since environmental analyses are required in instances where the executive director has determined that there is a significant effect on the human environment, those instances meet the definition of major amendment in §305.62(c)(1) by being “an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit.” The commission proposes to add that requirement to §305.62(c)(1)(A).

A major amendment for a low-level radioactive waste disposal facility receiving waste from others, is currently defined as authorizing: changes in the type or concentration limits of wastes to be received; receipt of wastes from other states not authorized in the existing license; changes in the operator of the facility; closure and the final closure plan for the disposal site; or transfers the license to the custodial agency. Because of the uniqueness of regulating a low-level radioactive waste disposal facility licensed to receive waste from others, the commission proposes that current requirements for major amendment be retained and incorporated into the definition of major amendment in §305.62(c)(1) as §305.62(c)(1)(B).

Section 305.62(c)(1) is proposed to be amended to add new subparagraphs (A) and (B). Section 305.62(c)(1)(A) indicates that an amendment for which the executive director prepares or requires a written environmental analysis is a major amendment. Section 305.62(c)(1)(B) specifies certain types of Chapter 336, Subchapter H, near-surface land disposal of radioactive waste license actions that require “major amendment” and is language derived, essentially unchanged, from the proposed deletion of the definition of “Major amendment” in §336.2(58)(B). Section 305.62(i) is proposed to be repealed

to remove a requirement to file amendment applications in accordance with Chapter 336 rather than this chapter.

Subsection 305.65 is proposed to be amended. In §305.65, the “(a)” is proposed to be deleted because subsection (b) is proposed to be deleted. Section 305.65(b) is proposed to be deleted to remove a statement that this section does not apply to renewal of radioactive material licenses. Radioactive material license renewals are proposed to be processed like other renewal applications submitted to this agency.

Section 305.67 is proposed to be amended to add a new subsection (c) to clarify that the executive director may, upon request of an applicant, terminate a license if the applicant has complied with all of the applicable decommissioning requirements in Chapter 336, Subchapter G. This proposal will provide for the use of consistent procedures throughout the agency’s permitting/licensing programs concerning voluntary termination.

Subchapter F - Permit Characteristics and Conditions

Section 305.121 is proposed to be amended to add “radioactive material disposal” to apply characteristics and conditions for permits issued under other programs to radioactive material licenses. This standardization will provide more consistency between programs, by locating basic conditions in one part of the rules and by standardizing the basic requirements. Standardization should make the application process easier for persons having multiple permits/licenses from the agency and make consolidated permitting easier to implement.

Section 305.123 is proposed to be amended to add "Texas Health and Safety Code, Chapters 361 and 401" and to delete "Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7" to allow the agency to incorporate requirements necessary to implement its responsibilities under THSC, Chapter 401, Radioactive Materials and Other Sources of Radiation into existing permits and to update the citation for the Texas Solid Waste Disposal Act, Chapter 361.

Section 305.125 is proposed to be amended. Section 305.125(9) is proposed to be amended to add a new paragraph (C) to refer to the requirements in Chapter 336 for reporting noncompliances/incidents to the executive director. Section 305.125(10) is proposed to be amended to add "and 401.063" to include the inspection and entry requirements under THSC, §401.063, as a standard permit condition. With the amendments to §305.125, the subject matter is addressed and therefore, §336.215 and §336.742, which are redundant of proposed 305.125, are concurrently proposed to be repealed in other portions of this rulemaking. Section 305.125(11)(B) is proposed to be amended to add "as otherwise required by Chapter 336 of this title or" to refer to Chapter 336 monitoring requirements and to exclude licenses issued under Chapter 336 from this subparagraph's RCRA reporting requirements under 40 CFR §264.73(b)(9). Section 305.125(22) is taken from concurrently repealed §336.219 which requires permittees to notify the executive director, in writing, following the filing of a voluntary or involuntary petition for bankruptcy. This provision will be applicable to all permits subject to Chapter 305. This simple notification requirement will allow the executive director to bring to the bankruptcy court's attention any environmental concerns which need to be addressed to protect health and the environment.

Section 305.127 is proposed to be amended. In the title of the section, the words “To Be” are proposed to be changed to lower case letters. Section 305.127(1) is proposed to be amended to add a new subparagraph (G) that adds fixed term limits for radioactive material licenses. The 20-year term limit a for low-level radioactive waste disposal license under Subchapter H does not constitute a change. The agency proposes a fixed limit, not to exceed ten years, for all other radioactive material licenses. The THSC, Chapter 401 is silent with regards to term limits for licenses not issued under Subchapter H, with the exception that the financial qualifications of the licensee are reviewed once every five years. This provision does not change that financial review requirement. The proposed ten-year limit is consistent with the term limit for RCRA and UIC Class I injection well permits and reflects the current practice of the agency. This consistent approach to ten-year terms will allow permittees to consider the option of consolidating separate permits into one. Section 305.127(4)(A) is proposed to be amended to add “to Chapter 336 of this title (relating to Radioactive Substance Rules) for radioactive material disposal standards,” to include the technical requirements of Chapter 336 as conditions to which the commission will refer for determination of requirements to be included in the license. Section 305.127(4)(C) is proposed to be amended to add “Chapter 336 of this title (relating to Radioactive Material Disposal Standards)” to incorporate by reference into the license, the technical requirements of Chapter 336 as license conditions.

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 significant fiscal implications for the

commission or other units of state and local government as a result of administration or enforcement of the proposed rules.

The proposed rules implement HB 1172 76th Legislature, 1999 (an Act relating to the definition of low-level radioactive waste) by amending the definition of low-level radioactive to be compatible with the NRC. The proposed rules would also make radiation control license application requirements more consistent with those of the rest of the agency.

The proposed rules would also require all permittees to notify the executive director in writing following a filing of a voluntary or involuntary petition for bankruptcy.

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 the radiation control program's license application requirements more consistent with the other agency application and permit requirements.

The proposed rules implement HB 1172 76th Legislature, 1999 (an Act relating to the definition of low-level radioactive waste) by amending the definition of low-level radioactive waste to be compatible with the NRC. The proposed rules would also make radiation control program's license application requirements more consistent with those of the rest of the agency.

Persons, businesses, or facilities applying for a permit to dispose of radioactive material would now be required to provide the agency a map with their application under proposed Chapter 305 application requirements. The cost of preparing and providing the map should not be a significant cost over the cost of preparing similar information under the former Chapter 336 requirements.

The proposed rules would also require all permittees to notify the executive director in writing following of a voluntary or involuntary petition for bankruptcy and impose a ten-year term limit for certain radioactive material licensees. However, these new requirements are not expected to have a significant fiscal impact on any licensee.

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 rules. The proposed rules implement HB 1172 76th Legislature, 1999 (an Act relating to the definition of low-level radioactive waste) by amending the definition of low-level radioactive to be compatible with the NRC. The proposed rules would also make radiation control program license application requirements more consistent with those of the rest of the agency. The proposed rules would also require all permittees to notify the executive director in writing following a voluntary or involuntary petition for bankruptcy and impose a ten-year term limit for certain radioactive material licensees. However, these new requirements are not expected to have a significant fiscal impact on any licensee.

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 305 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 the requirement to notify the agency in case of bankruptcy and the ten-year term limit for radioactive material licenses other than those granted under Chapter 336, Subchapter H, and additional application requirements in Chapter 305 are not expected to significantly increase the cost of licensees. The simple notification requirement in case of bankruptcy will allow the executive director to bring to the bankruptcy court’s attention any environmental concerns which need to be addressed to protect health and the environment. Similarly, the ten-year term limit will allow permittees to consider the option of consolidating separate permits into one. Currently, the radiation control program uses different definitions from the rest of the agency’s permitting programs for major and minor amendment. The TNRCC’s BPR-PIT, as part of its recommendation to make the permitting process consistent within the agency wherever possible, recommended that the definitions for major and minor amendment in Chapter 336 be repealed and that the radiation control program begin using the major and minor amendment definitions found in Chapter 305, Subchapter D.

According to §305.62(c), a major amendment is “an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit.” A minor amendment is “an amendment to improve or maintain the permitted quality or method of disposal of waste, or injection of fluid if there is neither a significant increase of the quantity of waste or fluid to be discharged or injected nor a material change in the pattern or place of discharge or injection. A minor amendment includes any other change to a permit issued under this chapter that will not cause, or relax a standard or criterion which may result in, a potential deterioration of quality of water in the state.”

Currently according to Chapter 336, major amendments to Subchapter F licenses include transfers of a license to another person, enlargement of the disposal area, the addition of another disposal area and substantial changes to the nature of the waste or the method of disposal. All of these types of changes, except for a license transfer, would be considered significant changes to a permit by other agency permitting programs, would be processed as major amendments, and are therefore proposed to be repealed. Since transfers do not “cause, or relax a standard or criterion which may result in, a potential deterioration of quality of water in the state”, there are no federal or state laws to the contrary, and the rest of the permitting programs treat transfers separately or as minor amendments, the commission proposes to process transfers for Subchapter F and G licenses under §305.64.

Amendments to Chapter 336 licenses for which an environmental analysis is required, are currently classified as major amendments. Since environmental analyses are required in instances where the executive director has determined that there is a significant effect on the human environment, those instances meet the definition of major amendment in §305.62(c)(1) by being “an amendment that

changes a substantive term, provision, requirement, or a limiting parameter of a permit.” The commission proposes to add that requirement to §305.62(c)(1)(A).

A major amendment to a Subchapter H license, under which a low-level radioactive waste disposal facility receiving waste from others would be licensed, is currently defined as authorizing: changes in the type or concentration limits of wastes to be received; receipt of wastes from other states not authorized in the existing license; changes in the operator of the facility; closure and the final closure plan for the disposal site; or transfers the license to the custodial agency. Because of the uniqueness of regulating a low-level radioactive waste disposal facility licensed to receive waste from others, the commission proposes that current requirements for major amendment for Subchapter H licenses be retained and incorporated into the definition of major amendment in §305.62(c)(1) as §305.62(c)(1)(B). Therefore, the proposed changes to the definitions of major and minor amendment are not substantially different from those in the current rules.

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: (1) implement House Bill (HB)1172, 76th Legislature, 1999, and its amendments to the THSC; (2) implement the recommendations of the TNRCC’s BPR-PIT to provide for consistency between the procedures of the radiation control program and the other permitting programs within the agency; and (3) improve readability and understanding by reorganizing Chapter 336 (relating to Radioactive Substance Rules), putting its requirements into plain English and eliminating redundancies

and conflicts. The rules will substantially advance these specific purposes by incorporating these changes to implement HB 1172: (1) amending the definition of low-level radioactive waste to be compatible with the NRC's definition; (2) incorporating the TNRCC's new exemption from rule authority; (3) adding an exemption to continue to 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; and by beginning to use the agency's definitions for major and minor amendments rather than radiation control program specific definitions; by moving the application process from Chapter 336 to Chapter 281 (relating to Applications Processing) and Chapter 305 (relating to Consolidated Permits) and amending it to be consistent with other agency application procedures; by making Chapter 336 more understandable by partially reorganizing the chapter; and by clarifying wording, eliminating unnecessary or repetitive language, and improving readability. Promulgation and enforcement of these rules will not burden private real property.

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, 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: GENERAL PROVISIONS

§§305.1, 305.2

§305.1. Scope and Applicability.

(a) The provisions of this chapter set the standards and requirements for applications, permits, and actions by the commission to carry out the responsibilities for management of waste disposal activities under the Texas Water Code, Chapters 26, 27, and 28, and the Texas Health and Safety Code, Chapters 361 and 401 [and the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7].

(b) (No change.)

§305.2. Definitions.

The definitions contained in the Texas Water Code, §§26.001, 27.002, and 28.001, and the Texas Health and Safety Code, §§361.003, 401.003, and 401.004, [the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §2,] shall apply to this chapter. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1)-(27) (No change.)

(28) **Permit** - A written document issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify, or operate, in accordance with stated limitations, a specified facility for waste discharge, for solid waste storage, processing, or disposal, for radioactive material disposal, or for underground injection, and includes a wastewater discharge permit, a solid waste permit, a radioactive material disposal license, and an injection well permit.

(29)-(33) (No change.)

(34) **Radioactive material** - A naturally occurring or artificially produced solid, liquid, or gas that emits radiation spontaneously [A material which is identified as a radioactive material under Texas Civil Statutes, Article 4590f, as amended, and the rules adopted by the Texas Board of Health pursuant thereto].

(35)-(48) (No change.)

SUBCHAPTER C: APPLICATION FOR PERMIT

§305.42, 305.45, 305.54

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.

§305.42. Application Required.

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

(c) An application for a new, amended, or renewed radioactive material license under Chapter 336 of this title (relating to Radioactive Substance Rules) shall consist of one signed original and five copies. The executive director may request additional copies. Copies of an application for a low-level radioactive waste disposal license under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) shall be retained by the applicant for distribution in accordance with written instructions from the executive director.

(d) (No change.)

§305.45. Contents of Application for Permit.

(a) Forms for permit applications will be made available by the executive director. [Except for applications under Chapter 336 of this title (relating to Radioactive Substance Rules), each] Each application for permit shall include the following:

(1)-(7) (No change.)

(8) Supplementary technical report. A supplementary technical report shall be submitted in connection with an application. The report shall be prepared either by a Texas registered professional engineer, or by a qualified person who is competent and experienced in the field to which the application relates and thoroughly familiar with the operation or project for which the application is made. The report shall include the following:

(A) (No change.)

(B) for each outfall, injection well, place of deposit, or place of disposal:

(i) (No change.)

(ii) the physical, [and] chemical, and radiological properties of the defined waste or the injection fluids; the characteristics of the waste or the injection fluid; the chemical, physical, thermal, organic, bacteriological, or radiological [radioactive] properties or characteristics, as applicable, described in enough detail to allow evaluation of the water and environmental quality considerations involved;

(C) such other information as reasonably may be required by the executive director for an adequate understanding of the project or operation, and which is necessary to provide the commission an adequate opportunity to make the considerations required by §331.121 of this title (relating to Class I Wells), §331.122 of this title (relating to Class III Wells), §305.50 of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit), §305.48 of this title (relating to Additional Contents of Applications for Waste Discharge Permits), §305.54 of this title (relating to Additional Requirements for Radioactive Material Licenses), §336.207 of this title (relating to General Requirements for the Issuance of a License), §336.513 of this title (relating to Technical Requirements for Active Disposal Sites), §336.617 of this title (relating to Technical Requirements for Inactive Disposal Sites), §336.705 of this title (relating to Content of Applications), and Chapter 330, Subchapter E of this title (relating to Municipal Solid Waste Permit Procedures).

(b) (No change.)

[(c) An application for a radioactive material license shall include the information specified in the applicable subchapter of Chapter 336 of this title.]

§305.54. Additional Requirements for Radioactive Material Licenses.

(a) (No change.)

[(b) An application for a license shall contain proposed written specifications relating to the operations of the facility and any disposition of radioactive material.]

(b) [(c)] If the applicant is a corporation under the Texas Business Corporation Act, written verification (either affidavit or tax receipt) shall be submitted with the application to confirm that no tax owed the state [State] under Chapter 171, Tax Code, is delinquent.

(c) [(d)] An application shall include information on ownership of the land on which the proposed project will be located, ownership of the proposed facilities, buildings, structures, and equipment, and ownership of properties adjacent to the proposed site.

(d) An application for a license may include a request for a license authorizing one or more activities provided the application specifies the additional activities for which licenses are requested and complies with commission rules as to applications for those licenses. The commission may require the issuance of separate specific licenses for those activities.

(e) The commission or executive director may at any time after the filing of the original application, and before the expiration of the license, require further statements or data to enable the commission to determine whether the application should be granted or denied or whether a license should be amended, renewed, or revoked.

(f) Applicants for licenses, other than renewals, shall describe in the application how facility design and procedures for operation will minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize the generation of low-level radioactive waste.

**SUBCHAPTER D: AMENDMENTS, RENEWALS, TRANSFERS,
CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS**

§§305.62, 305.65, 305.67

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.

§305.62. Amendment.

(a) (No change.)

(b) Application for amendment. An application for amendment shall include all requested changes to the permit. Information sufficient to review the application shall be submitted in the form and manner and under the procedures specified in Subchapter C [§§305.41-305.53] of this chapter [title] (relating to Application for Permit). The application shall include a statement describing the reason for the requested changes.

(c) Types of amendments.

(1) A major amendment is an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit.

(A) In case of a license issued under Chapter 336 (relating to Radioactive Substance Rules), a major amendment may also include an amendment for which the executive director has prepared a written environmental analysis or has determined that an environmental analysis is required.

(B) In case of 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), a major amendment is one which:

(i) authorizes a change in the type or concentration limits of wastes to be received;

(ii) authorizes receipt of wastes from other states not authorized in the existing license;

(iii) authorizes a change in the operator of the facility;

(iv) authorizes closure and the final closure plan for the disposal site;

or

(v) transfers the license to the custodial agency.

(2)-(3) (No change.)

(d)-(h) (No change.)

[(i) Amendment of radioactive material license. An application for amendment of a radioactive material license shall be filed with the executive director in accordance with Chapter 336 of this title (relating to Radioactive Substance Rules). An application for amendment shall specify how the license is to be amended and the basis for such amendment.]

§305.65. Renewal.

[(a)] Any permit renewal application that is declared administratively complete on or after September 1, 1999 is subject to this section. The permittee or the executive director may file an application for renewal of a permit. The application shall be filed with the executive director before the permit expiration date. Any permittee with an effective permit shall submit a new application at least 180 days before the expiration date of the effective permit, unless permission for a later date has been

granted by the executive director. The executive director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(1)-(9) (No change.)

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

§305.67. Revocation and Suspension upon Request or Consent.

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

(c) Upon request of the applicant, the executive director may terminate a radioactive material license in accordance with this section, if the licensee has complied with the applicable decommissioning requirements under Chapter 336 of this title (relating to Radioactive Substance Rules).

SUBCHAPTER F: PERMIT CHARACTERISTICS AND CONDITIONS

§§305.121, 305.123, 305.125, 305.127

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.

§305.121. Applicability.

The provisions of this subchapter establish the characteristics and standards for permits issued for injection wells, waste discharge, radioactive material disposal, and solid waste management, including sewage sludge.

§305.123. Reservation in Granting Permit.

Every permit is subject to further orders and rules of the commission. In accordance with the procedures for amendments and orders, the commission may incorporate into permits already granted any condition, restriction, limitation, or provision reasonably necessary for the administration and enforcement of Texas Water Code, Chapters 26, 27, and 28, and the Texas Health and Safety Code, Chapters 361 and 401 [Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7].

§305.125. Standard Permit Conditions.

Conditions applicable to all permits issued under this chapter, and which shall be incorporated into each permit expressly or by reference to this chapter are:

(1)-(8) (No change.)

(9) The permittee shall report any noncompliance to the executive director which may endanger human health or safety, or the environment.

(A)-(B) (No change.)

(C) Holders of radioactive material licenses issued under Chapter 336 of this title (relating to Radioactive Substance Rules) shall report noncompliances/incidents to the executive

director according to the requirements of §336.335 of this title (relating to Reporting Requirements for Incidents).

(10) Inspection and entry shall be allowed under Texas Water Code, Chapters 26-28, Texas Health and Safety Code, §§361.032-361.033, [and] 361.037, and 401.063, and 40 Code of Federal Regulations (CFR) §122.41(i). The statement in Texas Water Code, §26.014 that commission entry of a facility shall occur in accordance with an establishment's rules and regulations concerning safety, internal security, and fire protection is not grounds for denial or restriction of entry to any part of the facility, but merely describes the commission's duty to observe appropriate rules and regulations during an inspection.

(11) Monitoring and reporting requirements are as follows:

(A) (No change.)

(B) Except as otherwise required by Chapter 336 of this title or for records of monitoring information required by a permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR Part 503), monitoring and reporting records, including strip charts and records of calibration and maintenance, copies of all records required by the permit, records of all data used to complete the application for this permit, and the certification required by 40 CFR §264.73(b)(9) shall be retained at

the facility site for a period of three years from the date of the record or sample, measurement, report, application, or certification. This period shall be extended at the request of the executive director.

(C) (No change.)

(12)-(21) (No change.)

(22) Notice of bankruptcy.

(A) Each permittee shall notify the executive director, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (Bankruptcy) of the United States Code (11 USC) by or against:

(i) the permittee;

(ii) an entity (as that term is defined in 11 USC §101(14)) controlling the permittee or listing the permit or permittee as property of the estate; or

(iii) an affiliate (as that term is defined in 11 USC §101(2)) of the permittee.

(B) This notification must indicate:

(i) the name of the permittee;

(ii) the permit number(s);

(iii) the bankruptcy court in which the petition for bankruptcy was
filed; and

(iv) the date of filing of the petition.

§305.127. Conditions to be [To Be] Determined for Individual Permits.

Conditions to be determined on a case-by-case basis according to the criteria set forth herein,
and when applicable, incorporated into the permit expressly or by reference, are:

(1) Duration.

(A)-(F) (No change.)

(G) Radioactive material licenses.

(i) Licenses issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) shall be for a fixed term not to exceed 20 years.

(ii) Other radioactive material licenses shall be for a fixed term not to exceed ten years.

(2)-(3) (No change.)

(4) Requirements for individual programs.

(A) Requirements to provide for and assure compliance with standards set by the rules of the commission and the laws of Texas shall be determined and included in permits on a case-by-case basis to reflect the best method for attaining such compliance. Each permit shall contain terms and conditions as the commission determines necessary to protect human health and safety, and the environment. Reference is made to Chapter 330 of this title (relating to Municipal Solid Waste) for municipal solid waste facility standards, to Chapter 331 of this title (relating to Underground Injection Control) for injection well standards, to Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste) for solid waste facility standards, to Chapter 336 of this title (relating to Radioactive Substance Rules) for radioactive material disposal standards, [and] to Chapter 309 of this title (relating to Effluent Standards) for waste discharge standards, and to Chapter 329 of this title (relating to Drilled or Mined Shafts) for drilled or mined shaft standards.

(B) (No change.)

(C) New, amended, modified, or renewed permits shall incorporate any applicable requirements contained in Chapter 331 of this title [(relating to Underground Injection Control)] for injection well standards, Chapter 335 of this title [(relating to Industrial Solid Waste and Municipal Hazardous Waste)] for solid waste facility standards, Chapter 336 of this title (relating to Radioactive Material Disposal Standards), Chapter 309 of this title [(relating to Effluent Standards)] for waste discharge standards, [] and Chapter 329 of this title [(relating to Drilled or Mined Shafts)] for drilled or mined shaft standards.

(5)-(6) (No change.)