

# **Texas Commission on Environmental Quality**

## **Interoffice Memorandum**

**To:** Commissioners

**Date:** April 24, 2015

**Thru:** Bridget C. Bohac, Chief Clerk  
Richard A. Hyde, P.E., Executive Director

**From:** Brent Wade, Deputy Director  
Office of Waste

**Docket No.:** 2014-1223-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 37, Financial Assurance  
Chapter 336, Radioactive Substance Rules  
SB 347: Environmental Perpetual Care Account & Volume Reduction of  
LLRW  
Rule Project No. 2013-056-037-WS

**Background and reason(s) for the rulemaking:**

Senate Bill (SB) 347 (83rd Texas Legislature, 2013), by Senator Seliger, is the low-level radioactive waste bill, which became effective on September 1, 2013. SB 347 provides that beginning September 1, 2015, the license holder may only accept nonparty waste for disposal if the waste has been volume-reduced and the license holder collects a fee to support the compact commission. However, if volume reduction would change the waste classification to greater than Class C, volume reduction will not be required. SB 347 also directs the TCEQ to implement these volume reduction requirements by rule.

SB 347 also separates the TCEQ funds from the Texas Department of State Health Services (DSHS) funds in the perpetual care account. SB 347 creates a new environmental radiation and perpetual care account for the TCEQ and requires that the 20% surcharge on nonparty waste be deposited into the environmental radiation and perpetual care account. SB 347 requires the commission to deposit security from the licensee into the new Environmental Radiation and Perpetual Care Account, updates security reference to the new Environmental Radiation and Perpetual Care Account, and updates provisions to allow the commission to use money in the new Environmental Radiation and Perpetual Care Account for the Compact Commission.

SB 347 also requires the TCEQ and DSHS to collect a 5% fee on licensees and deposit the fees into their respective perpetual care accounts. SB 347 also repeals the \$500,000 cap on the fee and sets a new cap of \$100,000,000 (total for both the Radiation and Perpetual Care Account, and the Environmental Radiation and Perpetual Care Account).

SB 347 further provides that the 20% surcharge continues to be collected, regardless of whether the cap is reached. SB 347 carves out two separate caps within the \$100,000,000 cap for both compact generators and the uranium industry. Compact generators retain the original \$500,000 cap on the amount of fees they are required to pay and the cap for licensees for the extraction, processing, or concentration of uranium or thorium from ore is set at \$2 million. Further, license holders for the extraction, processing or concentration of

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uranium or thorium form ore is not required to pay the additional fee until they begin operations.

This rulemaking also amends the application requirements for licenses for source material recovery (i.e., uranium mining) and by-product disposal regarding notification to landowners of the licensed activities in §336.1111(1)(H). Under the current rule, an applicant is required to submit a signed certification from the landowners on which radioactive substances are recovered, stored, processed or disposed to reflect the landowner's consent to that activity and to acknowledge that decommissioning of the licensed site is required even if the licensee fails to perform the required decommissioning. The purpose of this provision was to assure that landowners are fully informed of both on-going licensed activities involving radioactive substances on the property and future closure requirements.

The landowner acknowledgement was not intended to provide landowner approval power of a proposed project or disrupt the ability of an applicant to prepare a complete application. Property arrangements between landowners and miners should be addressed in private agreements rather than encumbering the license application process. Instead of requiring landowners' signatures and consent, the adopted amendment will require the applicant to provide notification to the landowners and submit proof of this notification as part of the license application. The notification is in addition to any required public notice under 30 TAC Chapter 39 of the commission's rules.

The other purpose of this rulemaking is to conform with federal requirements. The United States Nuclear Regulatory Commission requires the TCEQ to make conforming changes to rules from time to time. This rulemaking includes changes to rules to ensure the commission's continued compatibility with the United States Nuclear Regulatory Commission, which are: 1) modifying the definition of Total Effective Dose Equivalent and 2) change the assumed annual real interest rate from 2% to 1% for payments to the perpetual care account to cover the costs of long-term care and maintenance.

**Scope of the rulemaking:**

The rulemaking would amend §336.2 to revise certain definitions to reflect the new dedicated general revenue account created by SB 347 and to make a non-substantive revision. The rulemaking would also amend §§37.9045, 37.9050, 336.105, and 336.1127 to the new name of the dedicated general revenue account created by SB 347. The rulemaking would also adopt new §336.739 to implement volume reduction requirements, prohibiting the disposal of any low-level radioactive waste in Texas which originated from outside of Texas or Vermont and has not been volume reduced by a factor of three, or to the greatest extent possible, with limited exceptions.

**A.) Summary of what the rulemaking will do:**

The rulemaking would amend §336.2 to revise the definitions of "Perpetual Care Account" and "Environmental Radiation and Perpetual Care Account" to reflect the new name of the

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dedicated general revenue account created by SB 347, and to make a non-substantive revision to the definition of "Total Effective Dose Equivalent (TEDE)."

The rulemaking would amend §§37.9045, 37.9050, 336.105, and 336.1127 to reflect the new name of the dedicated general revenue account created by SB 347 and to provide specific language regarding transfer and use of those funds. The rulemaking would amend §336.1127(c) to meet federal compatibility standards, which would change the assumed annual real interest rate from 2% to 1% for payments to the perpetual care account to cover the costs of long-term care and maintenance.

The rulemaking would amend §336.1111(1)(H) regarding the application requirements for notification to landowners for source material recovery and by-product disposal applications.

The rulemaking would also adopt new §336.739 to implement volume reduction requirements, prohibiting the disposal of any low-level radioactive waste in Texas, which originated from outside of Texas or Vermont and has not been volume reduced by a factor of three or to the greatest extent possible, with limited exceptions.

**B.) Scope required by federal regulations or state statutes:**

SB 347 requires the commission, by rule, to adopt the requirements related to volume reduction in Texas Health and Safety Code (THSC), §401.207.

**C.) Additional staff recommendations that are not required by federal rule or state statute:**

None. This rulemaking is required in Texas statute.

**Statutory authority:**

THSC, §§401.051, 401.103, 401.104, and 401.412, and Texas Water Code, §5.103 and §5.105.

**Effect on the:**

**A.) Regulated community:**

Both the licensee and generators of low-level radioactive waste will be affected. The licensee will have increased limits on the amount of waste that may be deposited into the facility and will need to comply with new regulatory requirements for nonparty waste. Generators may have to change their current waste processing procedures to comply with volume reduction requirements and may have to pay an additional fee if they cannot comply. The increased cap on the Environmental Radiation and Perpetual Care Account will also impose additional fees on licensees. The decrease in the assumed annual real interest rate in §336.1127(c) will increase the amount of money a licensee for uranium recovery and by-product disposal will need to provide to the perpetual care account to cover the costs of long-term care and maintenance.

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The adopted amendment to §336.1111(1)(H) will affect applicants for licenses for uranium recovery and by-product disposal and affect owners of property on which proposed uranium recovery or by-product disposal licensed sites are located.

**B.) Public:**

There is no direct impact to the public.

**C.) Agency programs:**

Agency staff will have to monitor for compliance with volume reduction requirements in addition to current regulatory compliance monitoring.

**Stakeholder meetings:**

There were no stakeholder meetings associated with this rulemaking; however, there was a public hearing for this rulemaking on January 13, 2015, in Austin, Texas.

**Public comment:**

The commission received seven written comments for, against, and generally about the rulemaking.

The commission received two oral comments. One comment from Waste Control Specialists stated its support of the rule, and one comment from Energy Solutions voiced concerns about volume reduction.

The commission received seven written comments from Waste Control Specialists, Energy Solutions, Advocates for Responsible Disposal in Texas, Electric Power Research Institute, STARS Alliance, the Uranium Committee of the Texas Mining & Reclamation Association, and Exelon Generation. The comments were generally supportive of parts of the rulemaking or expressed concerns about the volume reduction requirements in the rulemaking. Major concerns expressed about the volume reduction requirements included concerns about the possible impacts that volume reduction may have on worker safety or disposal site capacity, practical challenges generators may face in seeking to comply with the requirement, and concerns about the competitive marketplace exemption and other exemptions determined by the executive director.

**Significant changes from proposal:**

There were three changes to this rule from the proposal as a result of comments after further review by the commission. Three items were removed from new §336.739 on Volume Reduction: a prohibition against volume reduction of a waste resulting in a change of waste classification higher than Class C, because disposal of greater than Class C waste is prohibited elsewhere in rule; a prohibition against volume reduction of a waste resulting in an increase in concentration of radioactivity to exceed certain levels, determined by the executive director, because the executive director already holds the authority to restrict the disposal of such waste through the license as well as under THSC, Chapter 401, Subchapter F, and 30 TAC Chapter 336, Subchapter H; and a possible exception from the requirements to volume reduce waste, applicable to other waste, as determined by the

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executive director on a case-by-case basis, because no comments were received which identified any new waste streams that might be eligible for such an exemption so the language was determined to be unnecessary.

**Potential controversial concerns and legislative interest:**

The rulemaking regarding volume reduction requirements for waste has the potential to be controversial. Since SB 347 has passed, there has been significant interest from parties both within Texas and outside of Texas regarding volume reduction. Further, during the legislative process the industry and the disposal licensees had several discussions with legislative members and industry watch groups on this issue.

**Does this rulemaking affect any current policies or require development of new policies?**

No.

**What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?**

The rulemaking is necessary to implement SB 347. There are no alternatives to rulemaking.

**Key points in the adoption rulemaking schedule:**

***Texas Register* proposal publication date:** December 5, 2014

**Anticipated *Texas Register* adoption publication date:** May 29, 2015

**Anticipated effective date:** June 4, 2015

**Six-month *Texas Register* filing deadline:** June 5, 2015

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**Attachments**

Senate Bill 347

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