

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** October 28, 2016

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

From: Brent Wade, Deputy Director
Office of Waste

Docket No.: 2016-0578-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 336, Radioactive Substance Rules
Nuclear Regulatory Commission (NRC) Compatibility Rules
Rule Project No. 2016-035-336-WS

Background and reason(s) for the rulemaking:

The changes to Chapter 336, Subchapters A, D, and L will revise the Texas Commission on Environmental Quality's (TCEQ or commission) rules concerning definitions, general requirements for surveys and monitoring, physical protection of category 1 and 2 quantities of radioactive materials, and notification requirements to ensure compatibility with federal regulations promulgated by the United States Nuclear Regulatory Commission (NRC) which is necessary to preserve the status of Texas as an Agreement State under Title 10 Code of Federal Regulations Part 150 and under the "Articles of Agreement between the United States Atomic Energy Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to §274 of the Atomic Energy Act of 1954, as Amended." Rules which are designated by NRC as compatibility items must be adopted by an Agreement State within three years of the effective date of the NRC rules, in most cases.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

This rulemaking will modify the definitions of Agreement State and category 2 quantity of radioactive material in §336.2; modify the rules regarding general requirements for surveys and monitoring in §336.315(a)(2)(C) to state that potential radiological hazards include radiation levels and residual radioactivity and to add §336.315(e) to require the retention of subsurface residual radioactivity survey records; modify the rules regarding physical protection of category 1 and 2 quantities of radioactive materials in §336.357 to update a cross-reference, remove the requirement of notifying the NRC in addition to notifying the TCEQ, replace references to the NRC with TCEQ, modify contact information (mail addresses, phone numbers, internet address, and department names) of the NRC, and add a requirement protecting information against unauthorized disclosure; modify the definition of commencement of construction at §336.1105(10); amend §336.1105 to add a new definition for construction; modify the definition of unrefined and unprocessed ore in §336.1105(35); and modify §336.1113(2)(A) so that the licensee must notify TCEQ for any unusual conditions in the by-product material retention system that could result in a release of by-product material into unrestricted areas.

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

This rulemaking is required by the NRC to be compatible with federal regulations for Texas to retain its status as an Agreement State.

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

None.

Statutory authority:

The rulemaking will be adopted under the Texas Radiation Control Act (TRCA), Texas Health and Safety Code (THSC), Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; and THSC, §401.106, which authorizes the commission to adopt rules to exempt a source of radiation from the licensing requirements provided by the TRCA. The rulemaking is adopted as authorized by Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state.

Effect on the:

A.) Regulated community:

Licenses for the storage, processing, or disposal of radioactive waste and for source material recovery and by-product material disposal facilities will be affected. The effect is negligible because the modifications are either minor or are corrections.

B.) Public:

There is no direct impact to the public anticipated with this rulemaking.

C.) Agency programs:

There is no direct impact to other agency programs with this rulemaking.

Stakeholder meetings:

The commission did not hold any stakeholder meetings related to this rulemaking; however, a rule public hearing was offered in Austin during the public comment period.

Public comment:

TCEQ received written comments from the NRC. The first was to change a notification office within the NRC and the second states that for the TCEQ to be compatible with NRC regulations, TCEQ should add the word "site" or "facility" and include the phrase

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“including the subsurface” and reference their radiation protection requirements and their radiological criteria for license termination to §336.356(c).

Significant changes from proposal:

There were no changes from proposal since the comments did not relate to and are beyond the scope of this rulemaking project.

Potential controversial concerns and legislative interest:

No controversial concerns or legislative interest is anticipated.

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?

Failure to amend Chapter 336 will leave the TCEQ rules inconsistent with federal requirements and may result in Texas losing Agreement State status.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: October 19, 2016

Anticipated Texas Register adoption publication date: December 2, 2016

Anticipated effective date: December 8, 2016

Six-month Texas Register filing deadline: February 19, 2017

Agency contacts:

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Attachments

None

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