

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: April 20, 2016

Thru: Richard A. Hyde, P.E., Executive Director

Thru:  Brent Wade, Deputy Director
Office of Waste

From:  Charles Maguire, Division Director
Radioactive Materials

Subject: Rulemaking Draft Concept and Initiation Memo
Chapter 336, Radioactive Substance Rules

Suggested short title: Chapter 336 Update - Compatibility with NRC Rules

Introduction and reason(s) for the rulemaking:

The changes to 30 Texas Administrative Code (TAC) Chapter 336, Subchapters A, D and L will revise Texas Commission on Environmental Quality (TCEQ, agency, or commission) rules concerning definitions, general requirements for surveys and monitoring, physical protection of Category 1 and Category 2 quantities of radioactive material and licensee notification requirements for by-product material retention systems to ensure compatibility with federal regulations promulgated by the Nuclear Regulatory Commission (NRC). The rulemaking is necessary to preserve the status of Texas as an Agreement State under Title 10 Code of Federal Regulations (CFR) 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 Section 274 of the Atomic Energy Act of 1954, as Amended." Rules which are designated by the 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 proposed rule:

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 to state that potential radiological hazards include radiation levels and residual radioactivity and 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 correct mistakes in citing other rules, remove the requirement of notifying the NRC in addition to notifying the TCEQ, replace references to the NRC with TCEQ, modify contact information (mailing addresses, phone numbers, internet address, and department names) of the NRC and add a rule requiring protection of information against unauthorized disclosure; 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.

Potential controversial concerns and legislative interest:

No controversial concerns or legislative interest have been identified.

Potential alternatives:

These rules are required to ensure compatibility with regulations promulgated by the NRC which is necessary to preserve the status of Texas as an Agreement State.

Effect on the:

A) Regulated community:

Licenseses 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.

Proposed schedule and constraints:

Anticipated Proposal Date: August 3, 2016

Anticipated Public Comment Period: August 19, 2016 - September 19, 2016

Anticipated Adoption Date: November 16, 2016

Planned stakeholder involvement:

A stakeholder meeting is not scheduled for this rulemaking; however, a public hearing will be held during the rulemaking public comment period.

Statutory authority:

The rule is proposed 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 rule is proposed 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.

Direction and Guidance:

Rule or Non-Rule Project number: 2016-035-336-WS

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attachments:
None

NOTE: TR will submit electronic notice to the following after ED Briefing:

Marshall Coover
Erin Chancellor
Stephen Tatum
Jim Rizk
Office of General Counsel