

**SUBCHAPTER I: COMPACT WASTE DISPOSAL FACILITY APPLICATIONS  
SELECTION PROCESS**

**§§336.801, 336.803, 336.805, 336.807 - 336.809, 336.811, 336.813, 336.815, 336.817,  
336.819, 336.821, 336.823, 336.825**

**Effective January 8, 2004**

**§336.801. Applicability.**

(a) Initial license applications to receive, possess, and dispose of low-level radioactive waste from others at the compact waste disposal facility are subject to the application selection process set out in this subchapter. Applications for a license under this subchapter will be processed as set forth in this subchapter in addition to any procedural requirements applicable to radioactive material licensing in this title. In the event of a conflict between the procedural requirements of this subchapter and other procedural requirements in this title, the requirements of this subchapter shall prevail. The radioactive material license authorizing the receipt, possession, and disposal of low-level radioactive waste at the compact waste disposal facility must meet all of the requirements provided in Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste). The license authorizing the disposal of federal facility waste must meet the requirements of Subchapter J of this chapter (relating to Federal Facility Waste Disposal Facility) in addition to the requirements of Subchapter H of this chapter. License applications under Subchapters F and G of this chapter (relating to Licensing of Alternative Methods of Disposal of Radioactive Material, and Decommissioning Standards) are not subject to this subchapter.

(b) This subchapter addresses the application selection process for the licensing of the disposal of low-level radioactive waste at the compact waste disposal facility. Applications for other authorizations and permits issued by the commission required by the compact waste disposal facility are not subject to the application selection process provided in this subchapter.

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**§336.803. Receipt of License Applications.**

(a) License applications subject to this subchapter will be received by the commission for a 30-day period, beginning 180 days after the date of the *Texas Register* notice publication for receipt of applications for the siting, construction, and operation of a compact waste disposal facility and a federal facility waste disposal facility, if applicable, for disposal of low-level radioactive waste. The executive director shall not evaluate applications received after the 30-day application period.

(b) The commission shall post on its Web site the identity of all applicants filing applications and the Web address link required by §336.805 of this title (relating to Application Requirements.)

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**§336.805. Application Requirements.**

In addition to the application requirements provided elsewhere in this title, an applicant for a license subject to this subchapter must:

- (1) comply with Texas Health and Safety Code, Chapter 401, the rules under this title, and any other applicable requirement in the executive director's discretion;
- (2) include a nonrefundable \$500,000 application processing fee as provided in §336.103(a) of this title (relating to Schedule of Fees for Subchapter H Licenses);
- (3) provide evidence relating to the reasonableness of any technique for managing low-level radioactive waste to be practiced at the proposed land disposal facility or facilities including:
  - (A) studies of alternate techniques of waste processing and reduction at the site of waste generation; and
  - (B) studies of the use of aboveground isolation facilities; and
- (4) provide a complete copy of the application, including all amendments and/or supplements to the application, on a publicly accessible Web site, and provide the commission with the Web address link for the application materials.

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**§336.807. Administrative Review.**

- (a) Not later than the 45th day after the date an application is received under this subchapter, the executive director shall issue an administrative notice of deficiency to each applicant whose application is timely submitted, but is determined by the executive director to be administratively incomplete.
- (b) The executive director shall provide an applicant, for whom an administrative notice of deficiency is issued, not more than three 30-day opportunities to correct the noted deficiencies in the application. For each 30-day opportunity, the executive director will evaluate the information received in response to a notice of deficiency within 30 days. If the required information is not received from the applicant within 30 days of the date of receipt of the deficiency notice, the executive director shall return the incomplete application to the applicant.
- (c) The executive director shall reject any application that, after the period for correcting deficiencies has expired, is not administratively complete.

(d) In determining if an application is administratively complete, the executive director shall consider whether the application contains sufficient information that will allow the technical review of the application, including, but not limited to:

- (1) the identity and qualifications of the applicant;
- (2) a description of the proposed land disposal facility or facilities and site;
- (3) a description of the character of the proposed activities and the types and quantities of waste to be managed at the disposal facility or facilities;
- (4) a description of the proposed schedules for construction, receipt of waste, and closure;
- (5) a description of the financial assurance mechanism to be used;
- (6) a description of the design features of the facility or facilities, along with a description of the methods of construction and operation of the facility or facilities;
- (7) a characterization of the area and site characteristics, including ecology, geology, soils, hydrology, natural radiation background, climatology, meteorology, demography, and current land uses;
- (8) a description of the safety programs to be used at the proposed land disposal facility or facilities;
- (9) a copy of the warranty deed or other conveyance showing that the right, title, and interest in the land on which the land disposal facility or facilities are proposed to be located is owned in fee by the applicant as required by Texas Health and Safety Code, §401.204;
- (10) an application processing fee of \$500,000 as provided in §336.103(a) of this title (relating to Schedule of Fees for Subchapter H Licenses) and proof of additional funds sufficient to cover any further costs of processing the application as estimated by the commission; and
- (11) a copy of a resolution of support of the proposed land disposal facility or facilities from the commissioners court of the county in which the land disposal facility or facilities are proposed to be located.

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**§336.808. Ownership of Land and Buildings.**

(a) A license application to receive, possess, and dispose of low-level radioactive waste from others at the compact waste disposal facility may not be considered administratively complete unless

the applicant has acquired the title to and any interest in land and buildings on which the facility or facilities are to be located. Except as provided in subsection (b) or (c) of this section or for land and buildings already owned in fee by the state or federal government, the applicant must demonstrate ownership of an undivided interest in fee simple title of the land and buildings, including the surface and mineral estates, on which the land disposal facility or facilities are to be located.

(b) If an applicant is unsuccessful in acquiring undivided ownership of the mineral estate in fee simple of the land on which the facility or facilities are proposed to be located, the applicant may, to the extent permissible under federal law, request an exemption of the requirement under §336.5 of this title (relating to Exemptions). The application for exemption must be submitted with the license application in order to satisfy the requirements of the administrative review of the application. In addition to the requirements of §336.5 of this title, the applicant must demonstrate that the surface use agreement is permissible under federal law and consistent with the *Agreement Between the United States Nuclear Regulatory 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. If the requirement of ownership of the mineral estate in fee simple title is exempted under this subsection, the applicant must have entered into a surface use agreement that restricts access to natural resources, including slant drilling and subsurface mining, to the extent necessary to prevent intrusion into the site. The surface use agreement shall prohibit the use of the surface in the development and access of the natural resources in perpetuity by the owner of the mineral estate, heirs, and successors and shall be assigned to and be enforceable by the state or federal government upon conveyance of the property under §336.710(2) of this title (relating to Institutional Information).

(c) If an applicant cannot reach a surface use agreement and cannot otherwise obtain fee simple title to the mineral estate of the land on which the facility or facilities are proposed to be located, the applicant may petition the commission under §1.8 of this title (relating to Initiation of Proceeding) to request the attorney general to institute condemnation proceedings as provided under Texas Property Code, Chapter 21, to acquire fee simple interest in the mineral rights. The petition to request initiation of condemnation proceedings shall include a description of the communications between the applicant and the mineral estate interest owner, a demonstration of the applicant's good faith effort to acquire the mineral rights or to enter into a surface use agreement as provided in subsection (b) of this section, an appraisal of the fair market value of the mineral interest, a demonstration that the petitioner's application has been selected as the application with the highest technical merit under §336.813(d) of this title (relating to Evaluation of Applications), and a demonstration by the applicant of the ability to pay for all costs in obtaining the mineral interests in condemnation proceedings, including legal fees. The applicant shall provide a copy of the petition under this subsection to the owner of the mineral interest. If the petition is granted and the commission requests the attorney general to initiate condemnation proceedings, the applicant shall pay for all costs incurred by the commission in the process of obtaining the mineral interests, whether or not the mineral interests are successfully condemned.

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

When an application under this subchapter has been declared administratively complete, notice shall be provided under §39.702 of this title (relating to Notice of Declaration of Administrative Completeness). The applicant shall pay for all costs of issuing notice under this subchapter. The commission shall post on its Web site notice of the application(s) declared administratively complete.

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**§336.811. Public Meeting.**

(a) The executive director shall conduct at least one public meeting in the county or counties where a compact waste disposal facility or federal facility waste disposal facility is proposed to be located to receive public comments on the administratively complete applications as provided in §55.253 of this title (relating to Public Comment Processing). The applicant shall pay for the costs of providing notice of the public meeting and for the costs of holding the public meeting.

(b) The applicant shall publish notice of the public meeting in accordance with §39.405(f)(1) of this title (relating to General Notice Provisions), once each week during the three weeks preceding the public meeting. The notice shall include:

- (1) the applicant's name;
- (2) a description of the proposed activity;
- (3) the proposed location of the compact waste disposal facility;
- (4) the location and availability of the application;
- (5) the location, date, and time of the public meeting; and

(6) the name, address, and telephone number of the contact person for the applicant from whom interested persons may obtain further information.

(c) The chief clerk shall mail notice of the public meeting to persons listed in §39.413 of this title (relating to Mailed Notice).

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**§336.813. Evaluation of Applications.**

(a) The executive director shall prepare a written evaluation of each administratively complete application in terms of the criteria established under §§336.815, 336.817, 336.819, and 336.821 of this title (relating to Tier 1 Criteria, Tier 2 Criteria, Tier 3 Criteria, and Tier 4 Criteria).

(b) The executive director may issue a request for further information to each applicant whose administratively complete application is determined by the executive director to be insufficient for the purposes of the evaluation required in this section. An applicant, for whom a request for further information is issued, may be provided two 30-day opportunities to respond to the request at the discretion of the executive director.

(c) The executive director shall use the written evaluations and application materials to evaluate each application according to the criteria established by §§336.815, 336.817, 336.819, and 336.821 of this title. The executive director shall evaluate each application for each criterion for purposes of comparing the relative merit of the application, giving:

(1) equal weight to each criterion within a tier of criteria; and

(2) the greatest weight to Tier 1 criteria, greater weight to Tier 2 criteria than to Tier 3 criteria, and the least weight to Tier 4 criteria.

(d) Not later than the 270th day after receipt of the last timely filed application, the executive director, based on the written evaluations and application materials, shall select the application that has the highest comparative merit for technical review under §336.823 of this title (relating to Technical Review). If the selected application is rejected or denied by the commission, the executive director may select the application with the next highest comparative merit and proceed with the technical review under §336.823 of this title.

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**§336.815. Tier 1 Criteria.**

(a) The commission shall consider as Tier 1 criteria:

(1) the natural characteristics of the site for a proposed land disposal facility or facilities;

(2) the adequacy of the proposed land disposal facility or facilities and activities to safely isolate, shield, and contain low-level radioactive waste from mankind and mankind's environment; and

(3) the adequacy of financial assurance related to the proposed activities.

(b) Natural characteristics of the site include:

(1) the suitability of the site for the proposed activities, including the site's:

(A) geological characteristics;

- (B) topography, including features relating to erosion;
- (C) surface and underground hydrology;
- (D) meteorological factors; and
- (E) natural hazards;

(2) the compatibility of disposal activities with any uses of land near the site that could affect the natural performance of the site or that could affect monitoring of the land disposal facility or facilities and site;

(3) the adequacy of plans for the collection of prelicense monitoring data and background monitoring plans for the site, including analysis of the ambient conditions of the site and established trends of the site's natural parameters, including:

- (A) natural background radioactivity levels;
- (B) radon gas levels;
- (C) air particulate levels;
- (D) soil characteristics, including chemical characteristics;
- (E) surface water and groundwater characteristics; and
- (F) flora and fauna at the site;

(4) the possible effects of disposal activities on flora and fauna at or near the site; and

(5) the ease of access to the site.

(c) Adequacy of the proposed land disposal facility or facilities and activities includes:

(1) the capability of the proposed land disposal facility or facilities and activities to isolate, shield, and contain low-level radioactive waste in conformity with federal standards;

(2) acceptable operational safety; and

(3) acceptable long-term safety as demonstrated by analysis or study.

(d) Financial assurance criteria include:

(1) adequacy of the applicant's financial qualifications to:

(A) conduct the licensed activities as proposed, including:

(i) any required decontamination, decommissioning, reclamation, or disposal; and

(ii) control and maintenance of the site and land disposal facility or facilities after the cessation of active operations; and

(B) address any unanticipated extraordinary events that would pose a risk to public health and safety and the environment and that may occur at the site after decommissioning and closure of the land disposal facility or facilities;

(2) the adequacy of the applicant's financial assurance in an amount and type acceptable to the commission and adequate to cover potential injury to any property or person;

(3) the adequacy of the applicant's financial security, as required by commission rules; and

(4) the degree of certainty that the applicant will be able to maintain adequate financial security.

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**§336.817. Tier 2 Criteria.**

The commission shall consider as Tier 2 criteria:

(1) the suitability of land disposal facilities at the site that are associated with proposed activities and the adequacy of their engineering and design; and

(2) the suitability of the proposed land disposal facility or facilities for the chemical, radiological, and biological characteristics of the low-level radioactive waste as classified under the system established under Texas Health and Safety Code, §401.053.

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**§336.819. Tier 3 Criteria.**

The commission shall consider as Tier 3 criteria the applicant's:

(1) technical qualifications to receive, store, process, and dispose of low-level radioactive waste;

(2) experience in management and disposal of low-level radioactive waste and other radioactive materials;

(3) previous operating practices in this state and elsewhere, including the practices of a parent, subsidiary, or affiliated entity of the applicant, related to radioactive materials;

(4) record of compliance with environmental statutes, rules, and licenses in this state and in any other jurisdiction, including the records of a parent or subsidiary of the applicant, subject to Texas Health and Safety Code, §401.243;

(5) training programs proposed for its employees whose duties relate to the proposed site and activities;

(6) monitoring, recordkeeping, and reporting plans;

(7) low-level radioactive waste spill detection and clean-up plans for the proposed site and activities;

(8) decommissioning and post-closure plans;

(9) security plans;

(10) monitoring and protection plans for workers;

(11) emergency plans;

(12) plans for background monitoring during the license period, including analysis of the ambient conditions of the site and analysis of established trends of the site's natural parameters, including:

(A) natural background radioactivity levels;

(B) radon gas levels;

(C) air particulate levels;

(D) soil characteristics, including chemical characteristics;

(E) surface water and groundwater characteristics; and

(F) flora and fauna at the site; and

(13) ability to adequately manage the proposed land disposal facility or facilities and activities for the term of the license.

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**§336.821. Tier 4 Criteria.**

The commission shall consider as tier 4 criteria:

(1) the compatibility of uses of land near the proposed site that could be affected by the construction and operation of the land disposal facility or facilities; and

(2) possible socioeconomic effects on communities in the host county of:

(A) the proposed land disposal facility or facilities;

(B) the operation of the proposed land disposal facility or facilities; and

(C) related transportation of low-level radioactive waste to the land disposal facility or facilities.

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**§336.823. Technical Review.**

Upon selection of the application that has the highest comparative merit in accordance with §336.813 of this title (relating to Evaluation of Applications), the executive director shall begin the technical review of the selected application in accordance with §281.19 of this title (relating to Technical Review). The executive director shall give priority to the review of the selected application over all other radioactive materials licensing and registration matters pending before the commission. The executive director shall post on the commission Web site notice of the application selected for technical review.

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**§336.825. Delegation.**

The commission delegates to the executive director the authority to review and evaluate applications for radioactive materials licenses under this subchapter and to select the one application under §336.813 of this title (relating to Evaluation of Applications) for further technical review. A decision by the executive director under §336.813 of this title is not appealable to the commission until the commission makes a final decision on the selected license application.

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