

# Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

**To:** Commissioners **Date:** July 18, 2008

**Thru:** LaDonna Castañuela, Chief Clerk  
Mark R. Vickery, P.G., Executive Director

**From:** Dan Eden, Deputy Director  
Office of Permitting, Remediation, and Registration

**Docket No.:** 2008-0863-RUL

**Subject:** Commission Approval for Proposed Rulemaking  
Chapter 37, Financial Assurance  
Chapter 39, Public Notice  
Chapter 55, Requests for Reconsideration or Contested Case Hearings; Public Comment  
Chapter 305, Consolidated Permits  
Chapter 331, Underground Injection Control  
Chapter 336, Radioactive Substance Rules  
House Bill 3838, Senate Bill 1604: Phase 2 of Implementation of  
Radioactive Material Disposal and Source Material Recovery Requirements  
Rule Project No. 2007-029-336-PR

## Reasons for the rule package:

- **Under what authority are we proposing these changes?**
  - Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state;
  - Texas Health and Safety Code (THSC), Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act - TRCA);
  - THSC, §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally-occurring radioactive material, the recovery or processing of source material, and the processing of byproduct material;
  - THSC, §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation;
  - THSC, §401.103, concerning Rules and Guidelines for Licensing and Registration, 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, concerning Licensing and Registration Rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances;
  - THSC, §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste;
  - THSC, §401.245, concerning Compact Waste Disposal Fees, which requires the commission to establish fees for low-level radioactive waste disposal at the Texas Compact facility;
  - THSC, §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product material storage and processing facilities;

Re: Docket No. 2008-0863-RUL

- THSC, §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances;
  - TWC, §27.019, concerning, Rules, Etc., which authorizes the commission to adopt rules reasonably required for the performance of duties and functions under the Injection Well Act; and
  - TWC, §27.0513, concerning Area Permits and Production Areas for Uranium Mining, which authorizes the commission to establish rules for procedural, application and technical requirements for production area authorizations.
- 
- **Is this rulemaking required by federal rule or state statute? Which ones?** The proposed rulemaking is required by amendment to state statutes in Senate Bill (SB) 1604 and House Bill (HB) 3838, both from the 80th Legislature, 2007 and HB 1567, 78th Legislature, 2003.
  - **Are there any legal deadlines by which these rules must be proposed, adopted, or effective?** The effective dates of legislation being implemented are as follows: June 15, 2007 for SB 1604; September 1, 2007 for HB 3838; and September 1, 2003 for HB 1567.
  - **What issue(s) or problem(s) are we trying to solve?** The proposed rulemaking is the implementation of legislation and commission directive.
  - **Why is it important that we do this rule package?** It is important to do this rulemaking to be consistent with and to implement state statutes.
  - **Other important background or historical information.**  
Various radioactive waste management and disposal activities planned by Waste Control Specialist, LLC in Andrews County created the legislative desire to consolidate regulatory jurisdiction for the various activities under one state agency, the TCEQ. SB 1604 also transfers the licensing program for radioactive waste storage and uranium mining and additionally modifies the existing TCEQ underground injection control program requirements for uranium mining. After many years of depressed uranium prices, uranium prices reached an all-time high in 2007, with prediction to remain high in the coming years. New uranium mines and the re-opening of existing uranium mines and the associated license and permit applications are expected. There has been public concern expressed in some locations of current uranium mining operations and in location of uranium exploration.

**Scope of the rulemaking:**

This rulemaking will implement the remaining provisions of SB 1604, as well as HB 3838, 80th Legislature. SB 1604 provisions include, financial assurance requirements for programs transferred from the Department of State Health Services to the TCEQ; and new requirements, including new notice and opportunity for contested case hearings related to in situ uranium mining and new disposal fee assessment and collection for radioactive material. HB 3838 provisions are for well registration requirements for in situ uranium mining. In addition, a disposal rate setting for low-level radioactive waste, and related disposal fee assessment and collection must be established. SB 1604 requires the TCEQ to establish and administer new state fees for the disposal of radioactive wastes, consistent with the state fees for low-level radioactive waste on both Compact Waste and Federal Facility Waste. The TCEQ is also charged with establishing fee setting by rule for low-level radioactive waste that is defined as Compact Waste is disposed of in a Texas low-level radioactive waste disposal facility licensed by the TCEQ.

- **Changes required by federal rule:** There are no changes proposed by federal rule.

Re: Docket No. 2008-0863-RUL

- **Changes required by state statute:** The proposed rulemaking is required by amendment to state statutes in SB 1604 and HB 3838, both of the 80th Legislature, 2007 and HB 1567, 78th Legislature, 2003.
- **Staff recommendations that are not expressly required by federal rule or state statute:**
  - Adding new subsection on amendments to radioactive material licenses. The subsection would define a major amendment, a minor amendment, and an administrative amendment not requiring public notice.
  - Specify only initial issuance, renewals, and major amendments must publish a Notice of Declaration of Administrative Completeness.
  - Clarify when the public comment period is over for Notice of Completion of Technical Review for minor amendments under Chapter 336, Subchapter H (Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste), or Subchapter M (Licensing of Radioactive Substances Processing and Storage Facilities).
  - Set annual fees to be due on or before October 31 of each year to establish a consistent billing cycle.
  - Adding provisions to differentiate between by-product material impoundments and waste disposal units by including specific definitions.
  - Adding definitions for clarification and for consistency.
  - Integrates the transferred license program for source material recovery, reclamation, and disposal into existing commission requirements for financial assurance in Chapter 37, Subchapter T.
  - Add the existing financial assurance mechanisms allowed under department rules, the use of financial test and parent company guarantee, for the transferred license program for radioactive waste storage into requirements for financial assurance in Chapter 37, Subchapter T.

**Impact on the regulated community:**

- **Who will be affected?** The regulated community for radioactive material and in situ uranium mining will be affected; uranium miners; by-product material disposal; and low-level radioactive waste generator and disposal facility operator.
- **Does it create a group of affected persons who were not affected previously?** No. **How?**
- **Will there be a fiscal impact?** Yes. **If so, estimate.** The proposed financial assurance requirements will require two companies currently licensed for source material reclamation and disposal to use a different mechanism than was allowed under department rules. While it is unknown what cost is associated with having a large parent company guarantee on a company ledger, Financial Assurance staff has estimated the cost of using an alternate financial assurance mechanism at approximately one percent (1%) of the total amount of financial assurance. For example, for by-product disposal license holder Waste Control Specialists LLC, that would be approximately \$51,000, since the financial assurance amount required is \$5.1 million. For example, for by-product reclamation license holder Conoco Phillips, that would be approximately \$47,000, since the financial assurance amount required is \$4.7 million. Additionally, there are fees for major amendments and renewals that are proposed for radioactive material licensee to recover costs associated with the review of these applications.

Re: Docket No. 2008-0863-RUL

**Impact on the public:**

- **Who will be affected?** Members of the public will be affected near regulated facilities and sites where new activities are proposed, customers of regulated facilities, environmental/public interest groups involved with waste disposal and radiation issues, including uranium mining. Additionally, groundwater conservation authorities will also be affected by the new notice requirements and registration program associated with uranium mining.
- **Does it create a group of affected persons who were not affected previously? No. How?**
- **Will there be a fiscal impact? No. If so, estimate.**

**Impact on agency programs:**

- Office of Permitting, Remediation and Registration: Additional technical review of license applications. No additional FTEs are required.
- Environmental Law Division: Additional support for the technical review of license applications.
- Financial Assurance: Assistance in the review of the rate filing packages and review of financial assurance mechanisms.
- Office of the Chief Clerk: Notices will need to be mailed to additional parties (i.e. groundwater conservation district).
- Field Operations Division: Additional license requirements to inspect during investigations.

**Stakeholder meetings:**

- **Have any stakeholder meetings been held?** Stakeholder meetings were held in Austin, Texas on February 15, 2008 and April 25, 2008 to discuss rulemaking concepts and receive stakeholder input.
- **With whom?** Participants of the stakeholder meeting included the uranium mining industry, waste generators, a waste disposal operator, public, environmental groups, legislative staff, and elected officials.
- **What were the general sentiments?** Most comments were in support of the rules, with some requests for changes to financial assurance; underground injection control processes involving groundwater monitoring and restoration and aquifer exemptions; and public participation.
- **Were any changes made in response to stakeholder concerns?** Yes. Changes were made in response to stakeholder input where warranted.

**Policy issues:**

- **What policy issues are affected?** Financial assurance requirements for radioactive material licenses and the fees charged for the processing and review of applications.
- **Are any policies that are not currently based on rule being made into a rule? No.**
- **What are the consequences if this rulemaking is not approved to go forward?** The agency will not be implementing state statute and will not have rules in place to fully address the regulatory programs transferred to the TCEQ.

Commissioners

Page 5

July 18, 2008

Re: Docket No. 2008-0863-RUL

- **Are there alternatives?** There are no alternatives because this is a statutory requirement.

**Potentially controversial matters:**

There has been public concern expressed in some locations of current mining operations and in location of uranium exploration. There has been support from stakeholders, with the exception of one licensee, for the conformance of financial assurance mechanisms allowed for the transferred licensing programs with those already in place in Chapter 37, Subchapter T, namely not allowing the use of the financial test and parent company guarantee as an acceptable mechanism.

**Key points in proposed rulemaking schedule:**

- **Anticipated proposal date:** August 6, 2008
- **Anticipated *Texas Register* publication date:** August 22, 2008
- **Public hearing date (if any):** September 16, 2008
- **Public comment period:** August 6, 2008 through September 22, 2008
- **Anticipated adoption date:** December 10, 2008

**Agency contacts:**

Susan Jablonski, P.E., Rule Project Manager, 239-6731, Radioactive Materials Division  
Don Redmond, Staff Attorney, 239-0612  
Amie Richardson, Staff Attorney, 239-2999  
Patricia Duron, Texas Register Coordinator, 239-6087

Attachments

cc: Chief Clerk, 5 copies  
Executive Director's Office  
David C. Schanbacher, P.E.  
Ashley K. Wadick  
Daniel Womack  
Kevin Patteson  
Office of General Counsel  
Susan Jablonski, P.E.  
Patricia Duron