

Rulemaking Concepts and Issues

Revision of TCEQ Rules Dealing With Uranium Mining, Financial Assurance, Commercial Radioactive Waste Fees, and By-Product Material Disposal

Background

Senate Bill 1604, 80th Texas Legislature transfers regulatory authority to the TCEQ from the Department of State Health Services (DSHS) for commercial radioactive waste processing, source material recovery (uranium mining), and by-product material disposal. SB 1604 directs the incorporation of the technical requirements from DSHS rules to the TCEQ's rules. SB 1604 also addresses the process for TCEQ's continued review of a pending application for a by-product disposal facility proposed for Andrews County. In addition, SB 1604 addresses the TCEQ's underground injection control program for regulation of in situ uranium mining and requires the TCEQ to establish and administer a new state fee for the disposal of radioactive waste other than low-level radioactive waste.

Affected Rules

- 25 TAC §289 (relating to Licensing of Uranium Recovery and Byproduct Material Disposal Facilities)
- 30 TAC
 - Chapter 37 (relating to Financial Assurance)
 - Chapter 50 (relating to Action on Applications and Other Authorizations)
 - Chapter 281 (relating to Application Processing)
 - Chapter 305 (relating to Consolidated Permits)
 - Chapter 331 (relating to Underground Injection Control)
 - Chapter 336 (relating to Radioactive Substance Rules)

Phase 2 Rulemaking

This next phase includes rulemaking to implement the remaining provisions of Senate Bill (SB) 1604, as well as House Bill (HB) 3838, 80th Texas Legislature. To begin this effort, TCEQ has scheduled a stakeholder meeting for Friday, February 15, 2008 at 9:00 a.m. at the TCEQ, 12100 Park 35 Circle, Austin, Texas, Building E, Room 201S.

SB 1604 Considerations:

- Financial assurance requirements for programs transferred from the Department of State Health Service to the TCEQ; and

- New requirements, including new notice and opportunity for contested case hearings related to uranium in situ mining and new disposal fee assessment and collection for radioactive material.

HB 3838 Considerations:

- Well registration requirements for in situ uranium mining.

Additional Consideration:

- Disposal rate setting for low-level radioactive waste, and related disposal fee assessment and collection; and
- Commission directive to review and provide revisions, if appropriate, to the agency's in situ uranium mining program.

Additional Details

SB 1604 implementation was approached by splitting into two rulemakings - one fast-track for moving technical rules from the DSHS to TCEQ and a second track to implement changes to the transferred functions and new fees. The second track of rulemaking, referred to as Phase 2, will specifically incorporate new provisions for notice and contested case hearing opportunities related to Production Area Authorizations and UIC Area Permits, financial qualification review revisions, and new state fees on gross receipts associated with the radioactive waste disposal. 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 that is disposed of in a Texas low-level radioactive waste disposal facility licensed by the TCEQ.

House Bill 3838 specifically addresses the period between uranium exploration, which is regulated by the Texas Railroad Commission (RRC), and permitting and licensing of in situ uranium mining, which is regulated by TCEQ. The bill requires TCEQ to establish a registration program for exploration wells permitted by RRC that are used for development of the UIC area permit application and the license application. There are also new "production wells" that need to be added to the list of activities the TCEQ may authorize by rule or permit.

Related to uranium mining, staff had a directive pending from the Commission which was deferred until after the 80th legislative session due to pending legislation on this issue. The directive from the Commission to staff was to review the TCEQ in situ uranium program, get stakeholder input, and make revision based on the review and input. With the transferred program consolidating in situ mining activities at the TCEQ, this review and revision would include both well permitting and surface activity licensing.