

By: Duncan

S.B. No. 40

A BILL TO BE ENTITLED

AN ACT

relating to responsibilities of certain state agencies concerning radioactive substances; imposing fees and surcharges.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 401.003, Health and Safety Code, is amended by amending Subdivisions (2), (4), (5), (6), and adding Subdivision (12-a) to read as follows:

(2) "Board" means the executive commissioner of the Health and Human Services Commission [~~Texas Board of Health~~].

(4) "Commission" means the Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality.

(5) "Commissioner" means the commissioner of state [~~public~~] health services.

(6) "Department" means the [~~Texas~~] Department of State Health Services or other department designated by the executive commissioner of the Health and Human Services Commission.

(12-a) "Gross receipts" includes, with respect to an entity or affiliated members, owners, shareholders, or limited or general partners, all receipts from the entity's disposal operations in Texas licensed under this chapter including any bonus, commission, or similar payment received by the entity from a customer, contractor, subcontractor, or other person doing business with the entity or affiliated members, owners,

1 shareholders, or limited or general partners. This term does not
2 include receipts from the entity's operations in Texas, or
3 affiliated members, owners, shareholders, or limited or general
4 partners, for capital reimbursements, bona fide storage and
5 processing, and federal or state taxes or fees on waste received
6 uniquely required to meet the specifications of a license or
7 contract. The commission may promulgate rules in establishing the
8 criteria for determining gross receipts consistent with the
9 parameters of this definition.

10 SECTION 2. Subsections (a) and (b), Section 401.011, Health
11 and Safety Code, are amended to read as follows:

12 (a) The department is the Texas Radiation Control Agency.
13 The department has jurisdiction over activities and substances
14 regulated under this chapter except as provided by Subsection (b)
15 and Subchapters E, F, G, and K.

16 (b) The commission has jurisdiction to regulate and
17 license:

18 (1) the disposal of radioactive substances;

19 (2) the processing or storage of low-level radioactive
20 waste or naturally occurring radioactive material waste received
21 from other persons, except oil and gas NORM;

22 (3) the recovery or processing of source material in
23 accordance with Subchapter G;

24 (4) the processing of by-product material as defined
25 by Section 401.003(3)(B); and

26 (5) sites for the disposal of:

27 (A) low-level radioactive waste;

1 (B) by-product material; or

2 (C) naturally occurring radioactive material
3 waste ~~[except by-product material defined by Section~~
4 ~~401.003(3)(B)]~~.

5 SECTION 3. Section 401.054, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 401.054. NOTICE AND HEARING. (a) The department or
8 commission shall provide notice and an opportunity for a hearing on
9 a matter under its jurisdiction as provided by its formal hearing
10 procedures and Chapter 2001, Government Code, unless otherwise
11 required by this chapter, on written request of a person affected by
12 any of the following procedures:

13 (1) the denial, suspension, or revocation by the
14 department or commission of a license or registration;

15 (2) the determination by the department or commission
16 of compliance with or the grant of exemptions from a department or
17 commission rule or order; or

18 (3) the grant or amendment by the department or
19 commission of a specific license.

20 (b) The commission may hold a contested case hearing on a
21 license application under this chapter on the commission's
22 determination that a timely written request for a contested case
23 hearing was filed by a person affected. The determination of who is
24 a person affected under this chapter is governed exclusively by
25 this chapter ~~[This section does not apply to license or~~
26 ~~registration activities for which other notice and hearing~~
27 ~~procedures are required by this chapter]~~.

1 (c) The commission may hold a contested case hearing on an
2 application for the renewal of or an amendment of a license issued
3 under this chapter if a change is being requested that would
4 constitute a major amendment and a person affected requests the
5 hearing.

6 SECTION 4. Section 401.104, Health and Safety Code, is
7 amended by amending Subsection (b) and adding Subsection (f) to
8 read as follows:

9 (b) Except as provided by Subsection (e), the commission by
10 rule shall provide for licensing for the disposal of radioactive
11 substances ~~[material except for the disposal of by-product material~~
12 ~~defined by Section 401.003(3)(B)]. The department by rule shall~~
13 ~~provide for licensing the disposal of by-product material defined~~
14 ~~by Section 401.003(3)(B)]~~.

15 (f) A separate commercial storage and processing license
16 may be issued for a site also licensed for disposal under this
17 chapter.

18 SECTION 5. Subsection (a), Section 401.106, Health and
19 Safety Code, is amended to read as follows:

20 (a) The board or commission by rule may exempt a source of
21 radiation or a kind of use or user from the licensing or
22 registration requirements provided by this chapter and under the
23 agency's jurisdiction if the board or commission finds that the
24 exemption of that source of radiation or kind of use or user will
25 not constitute a significant risk to the public health and safety
26 and the environment.

27 SECTION 6. Subsection (c), Section 401.108, Health and

1 Safety Code, is amended to read as follows:

2 (c) The [~~department or~~] commission shall reevaluate every
3 five years the qualifications and security provided by a license
4 holder under Subchapter F or Subchapter G. The reevaluation may
5 coincide with license renewal procedures if renewal and
6 reevaluation occur in the same year.

7 SECTION 7. Subsection (b), Section 401.109, Health and
8 Safety Code, is amended to read as follows:

9 (b) The [~~department or~~] commission shall require a holder of
10 a license that authorizes the disposal of radioactive substances
11 [~~low-level radioactive waste as provided by Subchapter F~~] to
12 provide security acceptable to the commission [~~agency~~] to assure
13 performance of the license holder's obligations under this chapter.

14 SECTION 8. Section 401.111, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 401.111. CRITERIA FOR CERTAIN UNSUITABLE NEW SITES.

17 (a) The [~~board and~~] commission [~~each~~], in adopting rules for the
18 issuance of licenses under the commission's jurisdiction [~~their~~
19 ~~respective jurisdictions~~] for new sites for processing or disposal
20 of radioactive substances [~~low-level radioactive waste~~] from other
21 persons, shall adopt criteria for the designation of unsuitable
22 sites, including:

23 (1) flood hazard areas;

24 (2) areas with characteristics of discharge from or
25 recharge of a groundwater aquifer system; or

26 (3) areas in which soil conditions make spill cleanup
27 impracticable.

(b) The ~~[board and]~~ commission ~~[each]~~ shall consult with the advisory board and with the Texas Water Development Board, the State Soil and Water Conservation Board, the Bureau of Economic Geology, and other appropriate state agencies in developing proposed rules. The ~~[board and]~~ commission ~~[each]~~ by rule shall:

(1) require selection of sites in areas in which natural conditions minimize potential contamination of surface water and groundwater; and

(2) prohibit issuance of licenses for unsuitable sites as defined by the rules.

SECTION 9. Section 401.112, Health and Safety Code, is amended to read as follows:

Sec. 401.112. LOW-LEVEL RADIOACTIVE WASTE PROCESSING OR DISPOSAL LICENSE APPLICATION AND CONSIDERATIONS. (a) The ~~[department or]~~ commission~~[, within its jurisdiction]~~, in making a licensing decision on a specific license application to process or dispose of low-level radioactive waste from other persons, shall consider:

(1) site suitability, geological, hydrological, and meteorological factors, and natural ~~[naturals]~~ hazards;

(2) compatibility with present uses of land near the site;

(3) socioeconomic effects on surrounding communities of operation of the licensed activity and of associated transportation of low-level radioactive waste;

(4) the need for and alternatives to the proposed activity, including an alternative siting analysis prepared by the

1 applicant;

2 (5) the applicant's qualifications, including
3 financial and technical qualifications and compliance history
4 under the method for evaluation of compliance history developed by
5 the commission under Section 5.754, Water Code, for an application
6 to the commission [~~or the requirements of Section 401.110(b) for an~~
7 ~~application to the department~~];

8 (6) background monitoring plans for the proposed site;

9 (7) suitability of facilities associated with the
10 proposed activities;

11 (8) chemical, radiological, and biological
12 characteristics of the low-level radioactive waste and waste
13 classification under Section 401.053;

14 (9) adequate insurance of the applicant to cover
15 potential injury to any property or person, including potential
16 injury from risks relating to transportation;

17 (10) training programs for the applicant's employees;

18 (11) a monitoring, record-keeping, and reporting
19 program;

20 (12) spill detection and cleanup plans for the
21 licensed site and related to associated transportation of low-level
22 radioactive waste;

23 (13) decommissioning and postclosure care plans;

24 (14) security plans;

25 (15) worker monitoring and protection plans;

26 (16) emergency plans; and

27 (17) a monitoring program for applicants that includes

1 prelicense and postlicense monitoring of background radioactive
2 and chemical characteristics of the soils, groundwater, and
3 vegetation.

4 (b) An applicant for the specific license must submit with
5 the application information necessary for the commission [~~issuing~~
6 ~~agency~~] to consider the factors under Subsection (a).

7 (c) The [~~board and~~] commission [~~each within its~~
8 ~~jurisdiction~~] by rule shall provide specific criteria for the
9 different types of licensed low-level radioactive waste activities
10 for the listed factors and may include additional factors and
11 criteria that the [~~board or~~] commission[, ~~as appropriate,~~]
12 determines necessary for full consideration of a license.

13 SECTION 10. Subsections (a) and (b), Section 401.113,
14 Health and Safety Code, are amended to read as follows:

15 (a) Before a hearing under Section 401.114 begins, the
16 commission [~~agency holding the hearing~~] shall prepare or have
17 prepared a written analysis of the effect on the environment of a
18 proposed licensed activity that the commission [~~agency~~] determines
19 has a significant effect on the human environment.

20 (b) The commission [~~agency~~] shall make the analysis
21 available to the public not later than the 31st day before the date
22 of a hearing under Section 401.114.

23 SECTION 11. Section 401.114, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 401.114. NOTICE AND HEARING. (a) Before the
26 [~~department or~~] commission[, ~~within its jurisdiction,~~] grants or
27 renews a license to process or dispose of low-level radioactive

waste from other persons, the commission ~~[agency]~~ shall give notice and shall provide an opportunity for a public hearing in the manner provided by the commission's ~~[agency's]~~ formal hearing procedure and Chapter 2001, Government Code.

(b) In addition to other notice, the commission ~~[agency]~~ shall publish notice of the hearing in the manner provided by Chapter 313, Government Code, in the county in which the proposed facility is to be located. The notice shall state the subject and the time, place, and date of the hearing.

(c) The commission ~~[agency]~~ shall mail, by certified mail in the manner provided by the commission's ~~[agency's]~~ rules, written notice to each person who owns property adjacent to the proposed site. The notice must be mailed not later than the 31st day before the date of the hearing and must include the same information that is in the published notice. If true, the commission ~~[agency]~~ or the applicant must certify that the notice was mailed as required by this subsection, and at the hearing the certificate is conclusive evidence of the mailing.

SECTION 12. Section 401.116, Health and Safety Code, is amended to read as follows:

Sec. 401.116. LICENSE AMENDMENT. The commission shall adopt rules to establish requirements for public notice of and public participation in the amendment of a license issued under this subchapter. ~~[(a) An amendment to a license to process or dispose of low-level radioactive waste from other persons may take effect immediately.]~~

~~[(b) The department or commission, as appropriate, shall~~

1 ~~publish notice of the license amendment once in the Texas Register~~
2 ~~and in a newspaper of general circulation in the county in which the~~
3 ~~licensed activity is located and shall give notice to any person who~~
4 ~~has notified the agency, in advance, of the desire to receive notice~~
5 ~~of proposed amendment of the license.~~

6 ~~[(c) Notice under this section must include:~~

7 ~~[(1) the identity of the license holder,~~

8 ~~[(2) identification of the license, and~~

9 ~~[(3) a short and plain statement of the license~~
10 ~~amendment's substance.~~

11 ~~[(d) The agency shall give notice and hold a hearing to~~
12 ~~consider the license amendment if a person affected files a written~~
13 ~~complaint with the agency before the 31st day after the date on~~
14 ~~which notice is published under Subsection (b). The agency shall~~
15 ~~give notice of the hearing as provided by Section 401.114].~~

16 SECTION 13. Section 401.117, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 401.117. CONSTRUCTION LIMITATION. The ~~[department or]~~
19 commission shall prohibit major construction relating to
20 activities to be permitted under a license issued by the commission
21 ~~[agency]~~ to process or dispose of low-level radioactive waste from
22 other persons until the requirements in Sections 401.113 and
23 401.114 are completed.

24 SECTION 14. Subsection (a), Section 401.202, Health and
25 Safety Code, is amended to read as follows:

26 (a) The commission ~~[or department, within its respective~~
27 ~~jurisdiction,~~] may grant, deny, renew, revoke, suspend, or withdraw

1 licenses for the disposal of low-level radioactive waste from other
2 persons and for the processing of that waste.

3 SECTION 15. Subsections (a) and (b), Section 401.241,
4 Health and Safety Code, are amended to read as follows:

5 (a) In determining the amount of security required of a
6 ~~[compact waste disposal facility license]~~ holder of a license to
7 dispose of radioactive substances under Section 401.109, the
8 commission shall also consider the need for financial security to
9 address and prevent unplanned events that pose a risk to public
10 health and safety and that may occur after the decommissioning and
11 closure of the radioactive substances ~~[compact waste]~~ disposal
12 facility ~~[or a federal facility waste disposal facility licensed~~
13 ~~under Section 401.216]~~.

14 (b) The amount of security required of a compact waste
15 disposal facility license holder under this section may not be less
16 than \$20 million at the time the disposal facility site is
17 decommissioned. The commission shall use interest earned on the
18 security to offset any other financial obligations incurred by the
19 license holder to the commission. The commission shall establish a
20 schedule for the total payment of the amount of the security
21 required under this section based on:

22 (1) the amount of low-level radioactive waste received
23 at the site;

24 (2) the long-term risk to health, safety, and the
25 environment posed by the waste; and

26 (3) the need to address and prevent unplanned events
27 that pose a risk to public health and safety.

SECTION 16. Section 401.262, Health and Safety Code, is amended to read as follows:

Sec. 401.262. MANAGEMENT OF CERTAIN BY-PRODUCT MATERIAL. The commission [~~department~~] has sole and exclusive authority to assure that processing and disposal sites are closed and that by-product material is managed and disposed of in compliance with:

- (1) the federal commission's applicable standards; and
- (2) closure criteria the federal commission and the United States Environmental Protection Agency have determined are protective of human health and safety and the environment.

SECTION 17. Section 401.2625, Health and Safety Code, is amended to read as follows:

Sec. 401.2625. LICENSING AUTHORITY. The commission [~~commissioner~~] has sole and exclusive authority to grant, deny, renew, revoke, suspend, amend, or withdraw licenses for source material recovery and processing or for storage, processing, or disposal of by-product material.

SECTION 18. Subsections (a), (c), (d), (e), and (f), Section 401.263, Health and Safety Code, are amended to read as follows:

- (a) If the commission [~~department~~] is considering the issuance, renewal, or amendment of a license to process materials that produce by-product materials or a license to dispose of by-product material and the commission [~~department~~] determines that the licensed activity will have a significant impact on the human environment, the commission [~~department~~] shall prepare or have prepared a written environmental analysis.

1 (c) The commission [~~department~~] shall give notice of the
2 analysis as provided by commission [~~board~~] rule and shall make the
3 analysis available to the public for written comment not later than
4 the 31st day before the date of the hearing on the license.

5 (d) After notice is given, the commission [~~department~~]
6 shall provide an opportunity for written comments by persons
7 affected.

8 (e) The analysis shall be included as part of the record of
9 the commission's [~~department's~~] proceedings.

10 (f) The commission [~~board~~] by rule shall prohibit major
11 construction with respect to an activity that is to be licensed
12 until the requirements of Subsections (a), (b), (c), and (e) are
13 completed.

14 SECTION 19. Subsections (a), (c), and (d), Section 401.264,
15 Health and Safety Code, are amended to read as follows:

16 (a) The commission [~~department~~] on its own motion may or on
17 the written request of a person affected shall provide an
18 opportunity for a public hearing on an application over which the
19 commission [~~department~~] has jurisdiction to determine whether to
20 issue, renew, or amend a license to process materials that produce
21 by-product materials or a license to dispose of by-product
22 materials in the manner provided by Chapter 2001, Government Code,
23 and permit appearances with or without counsel and the examination
24 and cross-examination of witnesses under oath.

25 (c) The commission [~~department~~] shall make a record of the
26 proceedings and provide a transcript of the hearing on request of,
27 and payment for, the transcript or provision of a sufficient

1 deposit to assure payment by any person requesting the transcript.

2 (d) The commission [~~department~~] shall provide an
3 opportunity to obtain a written determination of action to be
4 taken. The determination must be based on evidence presented to the
5 commission [~~department~~] and include findings. The written
6 determination is available to the public.

7 SECTION 20. Section 401.265, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 401.265. CONDITIONS OF CERTAIN BY-PRODUCT MATERIAL
10 LICENSES. The commission [~~department~~] shall prescribe conditions
11 in a radioactive substances [~~material~~] license issued, renewed, or
12 amended for an activity that results in production of by-product
13 material to minimize or, if possible, eliminate the need for
14 long-term maintenance and monitoring before the termination of the
15 license, including conditions that:

16 (1) the license holder will comply with the applicable
17 decontamination, decommissioning, reclamation, and disposal
18 standards that are prescribed by the commission [~~board~~] and that
19 are compatible with the federal commission's standards for sites at
20 which those ores were processed and at which the by-product
21 material is deposited; and

22 (2) the ownership of a disposal site, other than a
23 disposal well covered by a permit issued under Chapter 27, Water
24 Code, licensed on-site waste disposal associated with a licensed in
25 situ leach uranium recovery facility, and the by-product material
26 resulting from the licensed activity are transferred, subject to
27 Sections 401.266-401.269, to:

1 (A) the state; or

2 (B) the federal government if the state declines
3 to acquire the site, the by-product material, or both the site and
4 the by-product material.

5 SECTION 21. Subsection (a), Section 401.266, Health and
6 Safety Code, is amended to read as follows:

7 (a) The commission [~~board~~] by rule or [~~order or the~~
8 ~~department by~~] order may require that before a license covering
9 land used for the disposal of by-product material is terminated,
10 the land, including any affected interests in the land, must be
11 transferred to the federal government or to the state unless:

12 (1) the federal commission determines before the
13 license terminates that the transfer of title to the land and the
14 by-product material is unnecessary to protect the public health,
15 safety, or welfare or to minimize danger to life or property; or

16 (2) the land is held in trust by the federal government
17 for an Indian tribe, is owned by an Indian tribe subject to a
18 restriction against alienation imposed by the federal government,
19 is owned by the federal government, or is owned by the state.

20 SECTION 22. Section 401.267, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 401.267. ACQUISITION AND SALE OF CERTAIN BY-PRODUCT
23 MATERIALS AND SITES. (a) The commission [~~department~~] may acquire
24 by-product material and fee simple title in land, affected mineral
25 rights, and buildings at which that by-product material is disposed
26 of and abandoned so that the by-product material and property can be
27 managed in a manner consistent with protecting public health,

1 safety, and the environment.

2 (b) The commission [~~department~~] may sell land acquired
3 under this section at the land's fair market value after the
4 commission [~~department~~] has taken corrective action to restore the
5 land to a condition that does not compromise the public health or
6 safety or the environment. The General Land Office shall negotiate
7 and close a transaction under this subsection on behalf of the
8 commission [~~department~~] using procedures under Section 31.158(c),
9 Natural Resources Code. Proceeds from the transaction shall be
10 deposited in the Texas capital trust fund.

11 SECTION 23. Section 401.269, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 401.269. MONITORING, MAINTENANCE, AND EMERGENCY
14 MEASURES. (a) The commission [~~department~~] may undertake
15 monitoring, maintenance, and emergency measures in connection with
16 by-product material and property for which it has assumed custody
17 under Section 401.267 that are necessary to protect the public
18 health and safety and the environment.

19 (b) The commission [~~department~~] shall maintain the
20 by-product material and property transferred to it in a manner that
21 will protect the public health and safety and the environment.

22 SECTION 24. Subsections (a), (b), (e), and (f), Section
23 401.270, Health and Safety Code, are amended to read as follows:

24 (a) If the commission [~~department~~] finds that by-product
25 material or the operation by which that by-product material is
26 derived threatens the public health and safety or the environment,
27 the commission [~~department~~] by order may require any action,

1 including a corrective measure, that is necessary to correct or
2 remove the threat.

3 (b) The commission [~~department~~] may issue an emergency
4 order to a person responsible for an activity, including a past
5 activity, concerning the recovery or processing of source material
6 or the disposal of by-product material if it appears that there is
7 an actual or threatened release of source material or by-product
8 material that presents an imminent and substantial danger to the
9 public health and safety or the environment, regardless of whether
10 the activity was lawful at the time. The emergency order may be
11 issued without notice or hearing.

12 (e) The commission [~~department~~] shall use the security
13 provided by the license holder to pay the costs of actions that are
14 taken or that are to be taken under this section. The commission
15 [~~department~~] shall send to the comptroller a copy of its order
16 together with necessary written requests authorizing the
17 comptroller to:

- 18 (1) enforce security supplied by the licensee;
19 (2) convert an amount of security into cash, as
20 necessary; and
21 (3) disburse from the security in the perpetual care
22 account the amount necessary to pay the costs.

23 (f) If an order issued by the commission [~~department~~] under
24 this section is adopted without notice or hearing, the order shall
25 set a time, at least 10 but not more than 30 days following the date
26 of issuance of the emergency order, and a place for a hearing to be
27 held in accordance with the rules of the commission [~~board~~]. As a

result of this hearing, the commission [~~department~~] shall decide whether to affirm, modify, or set aside the emergency order. All provisions of the emergency order shall remain in force and effect during the pendency of the hearing, unless otherwise altered by the commission [~~department~~].

SECTION 25. Subchapter G, Chapter 401, Health and Safety Code, is amended by adding Sections 401.271 and 401.272 to read as follows:

Sec. 401.271. STATE FEE ON RADIOACTIVE SUBSTANCES. (a) A holder of a license issued by the department or commission under this chapter that authorizes the disposal of a radioactive substance from other persons shall remit each quarter an amount equal to 10 percent of the license holder's gross receipts received from disposal operations under a license issued under this chapter that occur after the effective date of the Act enacting this section as follows:

(1) eight percent shall be remitted to the comptroller for deposit into the general revenue fund; and

(2) two percent shall be remitted to the host county in accordance with Sections 401.244(b) and (d).

(b) Subsection (a) does not apply to compact waste as defined by Section 401.2005(1), federal facility waste as defined in Section 401.2005(4), or industrial solid waste as defined by Section 361.003.

Sec. 401.272. AUDIT AUTHORITY. The commission may audit a license holder's financial records and waste manifest information to ensure that the fees imposed under this chapter are accurately

1 paid. The license holder shall comply with the commission's
2 audit-related requests for information.

3 SECTION 26. Section 401.301, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 401.301. LICENSE AND REGISTRATION FEES [~~COLLECTED BY~~
6 ~~DEPARTMENT~~]. (a) The commission and department may collect a fee
7 for each license and registration the agency [~~it~~] issues.

8 (b) The commission and the board each by rule shall set the
9 fee in an amount that may not exceed the actual expenses annually
10 incurred to:

11 (1) process applications for licenses or
12 registrations;

13 (2) amend or renew licenses or registrations;

14 (3) make inspections of license holders and
15 registrants; and

16 (4) enforce this chapter and rules, orders, licenses,
17 and registrations under this chapter.

18 (c) The commission and department may collect a fee, in
19 addition to the annual license and registration fee, of not less
20 than 20 percent of the amount of the annual license and registration
21 fee nor more than \$10,000 per annum from each licensee or registrant
22 who fails to pay the fees authorized by this section.

23 (d) The commission and department may require that each
24 person who holds a specific license issued by the agency
25 [~~department~~] annually pay to the agency [~~department~~] an additional
26 five percent of the appropriate annual fee set under Subsection
27 (b). Fees collected under this subsection shall be deposited to the

1 credit of the perpetual care account. The fees are not refundable.

2 (e) The commission and department shall suspend assessment
3 of a fee imposed under Subsection (d) if the amount of fees
4 collected under that subsection reaches \$500,000. If the balance
5 of fees collected subsequently is reduced to \$350,000 or less, the
6 commission and department shall reinstitute assessment of the fee
7 until the balance reaches \$500,000.

8 (f) The commission may assess and collect additional fees
9 from the applicant to recover the costs the commission incurs for
10 administrative review, technical review, and hearings on the
11 application.

12 SECTION 27. Subsection (a), Section 401.302, Health and
13 Safety Code, is amended to read as follows:

14 (a) The department, in coordination with the commission,
15 may set and collect an annual fee from the operator of each nuclear
16 reactor or other fixed nuclear facility in the state that uses
17 special nuclear material.

18 SECTION 28. Subsections (c), (e), (f), and (g), Section
19 401.305, Health and Safety Code, are amended to read as follows:

20 (c) Money and security in the perpetual care account may be
21 administered by the department or commission only for the
22 decontamination, decommissioning, stabilization, reclamation,
23 maintenance, surveillance, control, storage, and disposal of
24 radioactive substances [~~material~~] for the protection of the public
25 health and safety and the environment under this chapter and for
26 refunds under Section 401.303.

27 (e) The department or commission may use money in the

perpetual care account to pay for measures:

(1) to prevent or mitigate the adverse effects of abandonment of radioactive substances [~~materials~~], default on a lawful obligation, insolvency, or other inability by the holder of a license issued by the department or commission to meet the requirements of this chapter or of department or commission rules; and

(2) to assure the protection of the public health and safety and the environment from the adverse effects of ionizing radiation.

(f) The department or commission may provide, by the terms of a contract or lease entered into between the department or commission and any person or by the terms of a license issued by the department or commission to any person, for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site or facility subject to department or commission jurisdiction under this chapter as needed to carry out the purpose of this chapter.

(g) The existence of the perpetual care account does not make the department or commission liable for the costs of decontamination, transfer, transportation, reclamation, surveillance, or disposal of radioactive substances [~~material~~] arising from a license holder's abandonment of radioactive substances [~~material~~], default on a lawful obligation, insolvency, or inability to meet the requirements of this chapter or of department or commission rules.

SECTION 29. Section 401.343, Health and Safety Code, is

amended to read as follows:

Sec. 401.343. RECOVERY OF SECURITY. (a) The department or commission shall seek reimbursement, either by an order of the department or commission or a suit filed by the attorney general at the ~~[department's]~~ request of the department or commission, of security from the perpetual care account used by the department or commission to pay for actions, including corrective measures, to remedy spills or contamination by radioactive substances ~~[material]~~ resulting from a violation of this chapter relating to an activity under the ~~[department's]~~ jurisdiction of the department or commission or a violation of a rule, license, registration, or order adopted or issued by the department or commission under this chapter.

(b) On request by the department or commission, the attorney general shall file suit to recover security under this section.

SECTION 30. The heading to Subchapter K, Chapter 401, Health and Safety Code, is amended to read as follows:

SUBCHAPTER K. LICENSING AUTHORITY OF TEXAS ~~[NATURAL RESOURCE~~
~~CONSERVATION]~~ COMMISSION ON ENVIRONMENTAL QUALITY

AND THE RAILROAD COMMISSION OF TEXAS

SECTION 31. Subsections (a) and (b), Section 401.412, Health and Safety Code, are amended to read as follows:

(a) Upon the transfer of the rights, powers, duties, obligations, functions, and activities related to the regulation and licensing of the disposal of radioactive substances from the department to the commission, and ~~[N]~~notwithstanding any other provision of this chapter and subject to Sections 401.102 and

1 401.415, the commission has sole and exclusive authority to
2 directly regulate and to grant, deny, renew, revoke, suspend,
3 amend, or withdraw licenses for the disposal of radioactive
4 substances. ~~[In this subsection, "radioactive substance" does not~~
5 ~~include by-product material as defined by Section 401.003(3)(B).]~~

6 (b) Upon the transfer of the rights, powers, duties,
7 obligations, functions, and activities related to the regulation
8 and licensing of the disposal of radioactive substances from the
9 department to the commission, and [N]notwithstanding any other
10 provision of this chapter, the commission ~~[commissioner]~~ has the
11 sole and exclusive authority to grant, deny, renew, revoke,
12 suspend, amend, or withdraw licenses for the recovery and
13 processing of source material or disposal of by-product material
14 under Subchapter G.

15 SECTION 32. Section 401.413, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 401.413. COMMISSION DISPOSAL LICENSE REQUIRED. A
18 person required by another section of this chapter to obtain a
19 license for the disposal of a radioactive substance is required to
20 obtain the license from the commission and not from the department.
21 ~~[This section does not apply to a person required to obtain a~~
22 ~~license for recovery or processing of source material or for~~
23 ~~recovery, processing, or disposal of by-product material as defined~~
24 ~~by Section 401.003(3)(B).]~~

25 SECTION 33. Section 401.414, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 401.414. MEMORANDA ~~[MEMORANDUM]~~ OF UNDERSTANDING. The

1 Texas [~~Natural Resource Conservation~~] Commission on Environmental
2 Quality, the Health and Human Services Commission, and the Railroad
3 Commission of Texas [~~and the board of health~~] by rule shall adopt
4 memoranda [~~a memorandum~~] of understanding defining their
5 respective duties under this chapter.

6 SECTION 34. Section 401.415, Health and Safety Code, is
7 amended by amending Subsections (a), (d), and (e) and adding
8 Subsection (f) to read as follows:

9 (a) Notwithstanding any other provision of this chapter,
10 the Railroad Commission of Texas:

11 (1) has sole authority to regulate and issue licenses,
12 permits, and orders, and establish fees to pay for costs to regulate
13 the processing, storage, and disposal of oil and gas NORM waste and
14 the decontamination and maintenance of oil-field equipment; and

15 (2) may, in order to protect public health and safety
16 and the environment, require the owner or operator of oil and gas
17 equipment used in exploration, production, or disposal to:

18 (A) determine whether the equipment contains or
19 is contaminated with oil and gas NORM waste; and

20 (B) identify any equipment determined to contain
21 or be contaminated with oil and gas NORM.

22 (d) The Railroad Commission of Texas shall consult with the
23 department and the commission [~~Texas Natural Resource Conservation~~
24 ~~Commission~~] as appropriate regarding administration of this
25 section.

26 (e) To ensure that the State of Texas retains its Agreement
27 Status with the U.S. Nuclear Regulatory Commission, and to ensure

1 that radioactive materials are managed consistently to protect the
2 public health and safety and the environment, the Railroad
3 Commission of Texas shall issue rules on the management of oil and
4 gas NORM waste, including rules governing processing, storage, and
5 disposal of the waste, decontamination and maintenance of oil-field
6 equipment, and fees established pursuant to Subsection (a). In
7 developing those rules, the railroad commission ~~[and in so doing]~~
8 shall consult with the commission ~~[Texas Natural Resource~~
9 ~~Conservation Commission]~~ and the department ~~[Department of Health]~~
10 regarding protection of the public health and the environment. The
11 rules of the railroad commission shall provide protection for
12 public health, safety, and the environment equivalent to the
13 protection provided by rules of the commission applicable to
14 processing, storage, and disposal of other NORM wastes having
15 similar properties, quantities, and distribution~~[, although the~~
16 ~~approved methods and sites for disposing of oil and gas NORM wastes~~
17 ~~may be different from those approved for other NORM wastes]~~.

18 (f) In adopting a fee structure, the Railroad Commission of
19 Texas may consider any factors necessary to provide for the
20 equitable allocation among NORM operators of the costs of
21 administering the railroad commission's oil and gas NORM program
22 under this section. The total amount of fees estimated to be
23 collected under rules adopted by the railroad commission under this
24 section may not exceed the estimated costs of administering the
25 railroad commission's oil and gas NORM program under this section.

26 SECTION 35. Section 361.015, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 361.015. JURISDICTION: RADIOACTIVE WASTE. (a) The
2 commission is the state agency under Chapter 401 that licenses and
3 regulates radioactive waste storage, processing, and disposal
4 activities not preemptively regulated by the federal government.

5 (b) Except as provided by Subsection (a), the Health and
6 Human Services Commission, acting through the Department of State
7 Health Services or other department as designated by the executive
8 commissioner of the Health and Human Services Commission, [The
9 Texas Department of Health] is the state agency under Chapter 401
10 that regulates radioactive waste activities~~[, excluding disposal,]~~
11 not preemptively regulated by the federal government.

12 (c) The Railroad Commission of Texas is the state agency
13 that licenses and regulates the possession, storage, processing,
14 handling, and disposal of oil and gas NORM waste and the
15 decontamination and maintenance of oil-field equipment.

16 SECTION 36. Subchapter B, Chapter 27, Water Code, is
17 amended by adding Section 27.023 to read as follows:

18 Sec. 27.023. AUTHORIZATION FOR AREA-WIDE IN SITU MINING OF
19 RADIOACTIVE SUBSTANCES. (a) As a component of an injection well
20 permit, the commission may issue an authorization for in situ
21 mining of radioactive substances in a specified production area.
22 The authorization may not contain a provision that requires any
23 additional approval of the commission or any additional hearing for
24 the permit holder to conduct minor in situ mining in the production
25 area. The commission by rule shall define the difference between
26 major and minor in situ mining.

27 (b) On or after the effective date of the Act enacting this

section, a rule or provision of a permit or order of the commission that requires additional approval of the commission or an additional hearing for the permit holder to conduct minor in situ mining in the production area specified in an injection well permit is not effective. Notwithstanding any provision of this code or of a commission rule or order, an application for minor in situ authorization is not subject to a contested case hearing, regardless of when the application is submitted.

(c) This section does not affect the authority of the commission to:

(1) revoke, suspend, or amend a permit issued under this chapter;

(2) investigate a permit holder or an action taken under or in violation of a permit issued under this chapter; or

(3) enforce a provision of a permit issued under this chapter.

(d) The change in law made by this section does not affect any matter that is a subject of litigation on or before November 1, 2005. An administrative law judge presiding over a licensure proceeding under this section shall expedite the procedures necessary to complete the hearing in a timely manner.

SECTION 37. (a) An application for a new license to dispose of by-product material that is filed with the Department of State Health Services on or before January 1, 2005, shall be processed as follows:

(1) a license application subject to this subsection shall be governed only by the rules and regulations of the

1 department effective at the time such application was filed;

2 (2) the department shall complete any technical review
3 of a license application subject to this subsection and may issue a
4 draft license no later than January 1, 2006;

5 (3) the department shall render a final decision on a
6 license application subject to this subsection no later than
7 January 1, 2007: and

8 (4) a contested case hearing held on a license
9 application subject to this subsection that was filed with the
10 department on or before January 1, 2005, shall be timely conducted
11 to meet the requirement of (a)(3). Discovery in such a hearing shall
12 be limited to not more than 60 days in order to meet this
13 limitation. Notice of hearing shall be provided to the applicant,
14 the office of public interest counsel, the commissioner, and the
15 person who timely requested a contested case hearing by mail at
16 least 10 days in advance of the hearing.

17 (b) On the thirtieth day following the department's final
18 decision regarding a license application subject to subsection (a),
19 the following rights, powers, duties, obligations, functions,
20 activities, property, programs, and appropriations are transferred
21 to the Texas Commission on Environmental Quality:

22 (1) all rights, powers, duties, obligations,
23 functions, and activities:

24 (A) that Chapter 401, Health and Safety Code,
25 assigns to the Texas Department of Health, the Texas Board of
26 Health, or their successor agencies or to the governing body,
27 officers, or employees of that department, that board, or their

1 successor agencies, including the Health and Human Services
2 Commission and the Department of State Health Services; and

3 (B) that are related to licensing and regulation
4 of:

5 (i) radioactive substances recovery,
6 storage, processing, and disposal; or

7 (ii) long-term care of decommissioned sites
8 for disposal of by-product material;

9 (2) all equipment, information, documents,
10 facilities, and other property of the Health and Human Services
11 Commission or the Department of State Health Services pertaining to
12 licensing and regulation of:

13 (A) radioactive substances recovery, storage,
14 processing, and disposal under the jurisdiction of the Texas
15 Commission on Environmental Quality as provided by Subsection (b),
16 Section 401.011, Health and Safety Code, as amended by this Act; or

17 (B) long-term care of decommissioned sites for
18 disposal of by-product material;

19 (3) all appropriations for the state fiscal biennium
20 that begins September 1, 2005, made to the Health and Human
21 Services Commission or the Department of State Health Services for
22 activities related to licensing and regulation of:

23 (A) radioactive substances recovery, storage,
24 processing, and disposal under the jurisdiction of the Texas
25 Commission on Environmental Quality as provided by Subsection (b),
26 Section 401.011, Health and Safety Code, as amended by this Act; or

27 (B) long-term care of decommissioned sites for

1 disposal of by-product material; and

2 (4) the unexpended and unobligated portions of the
3 appropriations for the state fiscal biennium beginning
4 September 1, 2003, made to the Health and Human Services Commission
5 or the Department of State Health Services for activities described
6 by Subdivision (3) of this subsection.

7 (c) Appropriations transferred under Subdivision (4),
8 Subsection (b) of this section, are transferred for the remainder
9 of that state fiscal biennium.

10 (d) The Texas Commission on Environmental Quality, as of the
11 date of the transfer prescribed by Subsection (b) of this section,
12 has full responsibility for the administration and enforcement of
13 laws related to licensing or regulation of radioactive substances
14 recovery, storage, processing, and disposal under the jurisdiction
15 of the commission as provided by Subsection (b), Section 401.011,
16 Health and Safety Code, as amended by this Act, and licensing or
17 regulation of long-term care of decommissioned sites for the
18 disposal of by-product material. The Texas Commission on
19 Environmental Quality shall carry out all related duties,
20 responsibilities, functions, and activities as provided by law,
21 including those assigned by any other Acts of the 79th Legislature,
22 Regular Session or 1st Called Session, 2005.

23 (e) The transfer of rights, powers, duties, obligations,
24 functions, activities, property, and programs of the Health and
25 Human Services Commission or the Department of State Health
26 Services to the Texas Commission on Environmental Quality made by
27 this Act does not affect or impair any act done or obligation,

1 right, license, permit, requirement, or penalty accrued or existing
2 under the former law; that law remains in effect for the purposes of
3 any action concerning such an act done or obligation, right,
4 license, permit, requirement, or penalty. The Texas Commission on
5 Environmental Quality shall continue a proceeding of the Health and
6 Human Services Commission or the Department of State Health
7 Services that is related to a responsibility, duty, activity,
8 function, or program transferred by this Act, including processing
9 an application for a license or other authorization and including
10 enforcing the requirements of Chapter 401, Health and Safety Code,
11 or a rule adopted under that chapter. A rule of the Health and Human
12 Services Commission or the Department of State Health Services
13 related to a responsibility, duty, activity, function, or program
14 transferred by this Act is enforceable as a rule of the Texas
15 Commission on Environmental Quality until the Texas Commission on
16 Environmental Quality adopts other rules.

17 (f) Control of and title to all property and material
18 acquired by this state or an agency of this state under Section
19 401.267, Health and Safety Code, before the effective date of this
20 Act shall be transferred to the Texas Commission on Environmental
21 Quality on this state's behalf as soon as practicable. This section
22 does not apply to property or material sold by the state under
23 Subsection (b) of that section before the effective date of this
24 Act.

25 (g) The Texas Commission on Environmental Quality shall
26 provide an opportunity for employees of the Health and Human
27 Services Commission or the Department of State Health Services who

1 have performed duties related to a right, power, duty, obligation,
2 responsibility, function, activity, or program transferred by this
3 Act to request a transfer to commission employment. In making
4 employment decisions under this subsection, the Texas Commission on
5 Environmental Quality shall:

6 (1) ensure that state and federal requirements are met
7 by commission employees; and

8 (2) consider the value of maintaining continuity in
9 the personnel staffing relevant programs.

10 (h) The Texas Commission on Environmental Quality, the
11 Health and Human Services Commission, and the Department of State
12 Health Services by interagency agreement or contract shall
13 cooperate in preventing any delay that may be caused by or may occur
14 in the transfer of property or personnel or a right, power, duty,
15 obligation, responsibility, function, activity, or program made by
16 this Act.

17 (i) The transfers made by this Act do not affect any matter
18 that is the subject of litigation pending on the effective date of
19 this Act.

20 (j) The Texas Commission on Environmental Quality shall
21 continue any applications review or processing and any hearings
22 that concern a matter subject to transfer under Subsection (b) of
23 this section that, on the date of the transfer, is being conducted
24 by the Health and Human Services Commission or the Department of
25 State Health Services or their successor agencies. The agencies
26 shall cooperate and consult with each other to ensure that any delay
27 necessitated by the transfer is minimized to the greatest extent

1 possible. The Texas Commission on Environmental Quality shall
2 utilize progress made on any technical review or environmental
3 analysis conducted by the department prior to the effective date of
4 this Act.

5 (k) An application for the renewal or amendment of a license
6 to recover or process source material and to dispose of the
7 associated by-product material that was received prior to January
8 1, 2005, and is pending with the Department of State Health Services
9 on October 31, 2005, is considered, based on federal requirements,
10 approved by the Department of State Health Services on January 1,
11 2007 unless the Department of State Health Services before that
12 date determines that the application should not be approved because
13 of a health or safety emergency or because the applicant
14 substantially fails to meet application requirements.

15 (1) By January 1, 2007, the Department of State Health
16 Services shall:

17 (1) approve any pending remediation plan that is
18 subject to the transfer required under this section, according to
19 federal requirements;

20 (2) inspect the related remediation sites to ensure
21 that remedial actions have been completed according to the approved
22 plan; and

23 (3) report to the federal Nuclear Regulatory
24 Commission the department's approval of the plan and the results of
25 the inspection under Subdivisions (1) and (2) of this subsection.

26 (m) A remediation plan that is subject to the transfer
27 required under this section the approval of which is pending with

1 the Department of State Health Services on January 1, 2007 is
2 considered, based on federal requirements, approved by the
3 department on January 1, 2007, unless the department or the Texas
4 Commission on Environmental Quality before that date determines
5 that the plan should not be approved because of a health or safety
6 emergency or because the plan substantially fails to meet
7 requirements for approval.

8 (n) Notwithstanding the changes to Chapter 401, Health and
9 Safety Code, made by this Act, the Department of State Health
10 Services shall retain jurisdiction over, and render a final
11 decision on, an application for an amended license to store or
12 process radioactive substances that was filed with the department
13 on or before January 1, 2005, and that has been referred to the
14 State Office of Administrative Hearings by the department before
15 the effective date of this Act. A license application subject to
16 this subsection is governed only by the laws of the state and the
17 rules and regulations of the department effective at the time the
18 application was filed. Once a final decision is rendered by the
19 department, jurisdiction over any license issued shall be
20 transferred to the Texas Commission on Environmental Quality.

21 (o) Prior to the transfer of the rights, powers, duties,
22 obligations, functions, and activities related to the regulation
23 and licensing of the disposal of radioactive substances from the
24 department to the commission under subsection (b), the department
25 shall provide the commission with the opportunity to comment on the
26 development and drafting of license conditions related to the
27 technical requirements for the disposal of radioactive substances.

1 Upon the transfer of the rights, powers, duties, obligations,
2 functions, and activities related to the regulation and licensing
3 of the disposal of radioactive substances from the department to
4 the commission under subsection (b), the commission may initiate an
5 amendment or a modification to a license issued by the department.

6 SECTION 38. (a) In the event that the department does not
7 render a final determination on a license application subject to
8 Section 37 (a) of this Act in a timely manner in accordance with
9 Section 37 (b) of this Act, the department shall remain responsible
10 for rendering a final determination on the license application.

11 SECTION 39. (a) In this section, "license" means a license
12 that authorizes the license holder to receive, process, store, and
13 transfer by-product material, as defined by Paragraph (B),
14 Subdivision (3), Section 401.003, Health and Safety Code.

15 (b) On the effective date of this Act, a condition of a
16 license that would subject the license holder to a civil or
17 administrative penalty for the license holder's failure to transfer
18 by-product material to certain disposal sites by a certain date is
19 void.

20 SECTION 40. (a) This Act does not impair, delay, or affect
21 the priority established by law for processing and review of the
22 application for a license to dispose of low-level radioactive waste
23 that was filed with the Texas Commission on Environmental Quality
24 before January 1, 2005.

25 (b) The Texas Commission on Environmental Quality shall
26 give priority to the processing and review of a license application
27 described by Subsection (a) of this section over all other

1 applications that pertain to radioactive substances or radioactive
2 waste pending before the commission except for those applications
3 the executive director of the Texas Commission on Environmental
4 Quality determines are necessarily of a higher priority to avert or
5 address an emergency concerning the public health or safety.

6 (c) The department shall, in the following order, give
7 priority to the review and processing of:

8 (1) an application for the renewal or amendment of a
9 license to recover or process source material and to dispose of the
10 associated by-product material that was received prior to January
11 1, 2005;

12 (2) an application for termination of a license to
13 recover or process source material and dispose of associated
14 by-product material generated in this state; and

15 (3) a new application for a permit to recover or
16 process source material and dispose of associated by-product
17 material generated in this state.

18 (d) Upon the transfer of the rights, powers, duties,
19 obligations, functions, and activities related to the regulation
20 and licensing of the disposal of radioactive substances from the
21 department to the commission, and subject to the priority given
22 under Subsections (a) and (b) of this section, the Texas Commission
23 on Environmental Quality shall give priority to the review and
24 processing of applications pursuant to Subsection (c) of this
25 section.

26 SECTION 41. Notwithstanding other law or any rule on the
27 subject of timeliness of an applicant providing information

1 pertaining to an application for a license from the Texas
2 Commission on Environmental Quality, the applicant for a license
3 shall assist the commission in meeting any deadlines imposed by
4 Chapter 401, Health and Safety Code, by submitting to the
5 commission any information the commission requires regarding the
6 application in a prompt and timely manner.

7 SECTION 42. (a) Pursuant to the transfer schedule in
8 Section 37 (b) of this Act:

9 (1) all money appropriated to the Department of State
10 Health Services for the regulation of the commercial storage and
11 processing and the disposal of radioactive waste, except money
12 related to the regulation of oil and gas naturally occurring
13 radioactive material waste, is transferred to the Texas Commission
14 on Environmental Quality, including \$447,608 out of the General
15 Revenue Fund in each fiscal year of the state fiscal biennium
16 beginning September 1, 2005; and

17 (2) eight full-time equivalent employees of the
18 Department of State Health Services working in the regulation of
19 the commercial storage and processing and the disposal of
20 radioactive waste, except those employees whose work is related to
21 the regulation of oil and gas naturally occurring radioactive
22 material waste, are transferred to the Texas Commission on
23 Environmental Quality.

24 (b) Fee revenues deposited to the credit of the General
25 Revenue Fund (No. 0001), Revenue Code 3589, are appropriated to the
26 Texas Commission on Environmental Quality in the amounts not to
27 exceed \$1,181,156 for the state fiscal year beginning September 1,

1 2005, and not to exceed \$1,064,656 for the state fiscal year
2 beginning September 1, 2006.

3 (c) The Texas Commission on Environmental Quality shall use
4 the appropriated money to regulate radioactive waste as provided by
5 Chapter 401, Health and Safety Code.

6 (d) The number of full-time equivalent employees authorized
7 for the Texas Commission on Environmental Quality is increased by
8 an additional eight for each fiscal year of the state fiscal
9 biennium beginning September 1, 2005.

10 (e) The governor with the advice of the Legislative Budget
11 Board may resolve any disputes concerning the transfer of
12 appropriations and employees from the Department of State Health
13 Services to the Texas Commission on Environmental Quality under
14 this Act.

15 SECTION 43. (a) The following sections of this Act shall
16 become effective on the effective date of this Act:

- 17 (1) Section 1
- 18 (2) Section 25
- 19 (3) Section 26
- 20 (4) Section 27
- 21 (5) Section 36
- 22 (6) Section 37
- 23 (7) Section 38
- 24 (8) Section 39
- 25 (9) Section 40
- 26 (10) Section 41
- 27 (11) Section 42

1 (12) Section 43

2 (b) All other sections of this Act become effective pursuant
3 to Section 37 (b) of this Act.

4 SECTION 44. This Act takes effect immediately if it
5 receives a vote of two-thirds of all the members elected to each
6 house, as provided by Section 39, Article III, Texas Constitution.
7 If this Act does not receive the vote necessary for immediate
8 effect, this Act takes effect November 1, 2005.