

CHAPTER 992

S.B. No. 1043

AN ACT

relating to the regulation of radioactive source material recovery, processing, and disposal activities and establishing and appropriating fees; transferring functions and appropriations.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subchapter G, Chapter 401, Health and Safety Code, is amended to read as follows:

SUBCHAPTER G. SPECIAL PROVISIONS CONCERNING BY-PRODUCT MATERIAL

Sec. 401.261. SUBCHAPTER APPLICATION. *In* [A reference in] this subchapter:

- (1) "By-product material" does not include [to by-product material includes only] that by-product material defined by Section 401.003(3)(A) [401.003(3)(B)].
- (2) "Commission" means the Texas Natural Resource Conservation Commission.
- (3) "Federal commission" means the United States Nuclear Regulatory Commission.
- (4) "Processing" means the possession, use, storage, extraction of material, transfer, volume reduction, compaction, or other separation incidental to recovery of source material.

Sec. 401.262. MANAGEMENT OF CERTAIN BY-PRODUCT MATERIAL. The commission has sole and exclusive authority to [department shall] assure that by-product material is managed in compliance with the federal commission's applicable standards.

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

Sec. 401.263. APPLICATION; ENVIRONMENTAL ANALYSIS. (a) If the commission [department] is considering the issuance, [or] renewal, or amendment of a license to process materials that produce by-product materials and determines that the licensed activity [license] will have a significant impact on the human environment, the commission [department] shall prepare or have prepared a written environmental analysis.

- (b) The analysis must include:
 - (1) an assessment of the radiological and nonradiological effects of the licensed activity on the public health;
 - (2) an assessment of any effect of the licensed activity on a waterway or groundwater;
 - (3) consideration of alternatives to the licensed activity, including alternative sites and engineering methods; and

(4) consideration of decommissioning, decontamination, reclamation, and other long-term effects associated with a licensed activity, including management of by-product material.

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

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

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

(f) The *commission* [department] shall prohibit major construction with respect to an activity that is to be licensed until the requirements of Subsections (a), (b), (c), and (e) are completed.

Sec. 401.264. NOTICE AND HEARING. (a) The *commission on its own motion may or on the written request of a person affected* [department] shall provide an opportunity for a public hearing on an *application over which the commission has jurisdiction* [environmental analysis] to determine whether to issue, [~~or~~] renew, or amend a license to process materials that produce by-product materials in the manner provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and permit appearances with or without counsel and the examination and cross-examination of witnesses under oath.

(b) A person affected may become a party to a proceeding on a determination that the person possesses a justiciable interest in the result of the proceeding.

(c) The *commission* [department] shall make a record of the proceedings and provide a transcript of the hearing on request of, and payment for, the transcript or provision of a sufficient deposit to assure payment by any person requesting the transcript.

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

(e) The determination is subject to judicial review *in a district court of Travis County*.

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

(1) the license holder will comply with *the applicable* decontamination, decommissioning, reclamation, and disposal standards that are prescribed by the board or *commission* and that are equivalent to or more stringent than the *federal* commission's standards for sites at which those ores were processed and at which the by-product material is deposited; and

(2) the ownership of a disposal site, other than a disposal well covered by a permit issued under Chapter 27, Water Code, and the by-product material resulting from the licensed activity are transferred, subject to Sections 401.266-401.269, to:

(A) the state; or

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

Sec. 401.266. TRANSFER OF LAND REQUIRED. (a) The *commission* [board] by rule or [~~may require or the department~~] by order may require that before a license covering land used for the disposal of by-product material is terminated, the land, including any affected interests in the land, must be transferred to the federal government or to the state unless:

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

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

(b) By-product material transferred to the state under this section shall be transferred without cost to the state, ~~other than administrative and legal costs incurred in making the transfer~~.

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

Sec. 401.268. LIABILITY. The transfer of the title to by-product material, land, and buildings under Section 401.267 does not relieve a license holder of liability for ~~fraudulent or negligent~~ acts performed before the transfer.

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

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

Sec. 401.270. CORRECTIVE ACTION AND MEASURES. (a) If the *commission* [department] finds that by-product material or the operation by which that by-product material is derived threatens the public health and safety or ~~and~~ the environment ~~and that the license holder is unable to correct or remove the threat~~, the *commission* [department] by order may require any action, including a corrective measure, that is necessary to correct or remove the threat.

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

(c) *An emergency order may be issued under Subsection (b) to:*

(1) *restrain the person from allowing or continuing the release or threatened release; and*

(2) *require the person to take any action necessary to provide and implement an environmentally sound remedial action plan designed to eliminate the release or threatened release.*

(d) *An emergency order issued under Subsection (b) shall:*

(1) *be delivered to the person identified by the order by certified mail, return receipt requested;*

(2) *be delivered by hand delivery to the person identified by the order; or*

(3) *on failure of delivery of the order by certified mail or hand delivery, be served on the person by publication:*

(A) *once in the Texas Register; and*

(B) *once in a newspaper of general circulation in each county in which was located the last known address of a person identified by the order.*

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

(1) *enforce security supplied by the licensee;*

(2) convert an amount of security into cash, as necessary; and

(3) disburse from the security in the fund the amount necessary to pay the costs.

(f) If the order issued by the commission pursuant to this section is adopted without notice or hearing, the order shall set a time, at least 10 but not more than 30 days following the date of issuance of the emergency order, and a place for a hearing to be held in accordance with the rules of the commission. As a result of this hearing, the commission 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.

SECTION 2. Section 401.412, Health and Safety Code, is amended to read as follows:

Sec. 401.412. COMMISSION LICENSING AUTHORITY. (a) Notwithstanding any other provision of this chapter and subject to Section 401.102, the Texas Natural Resource Conservation Commission has sole and exclusive authority to directly regulate and to grant, deny, renew, revoke, suspend, amend, or withdraw [issue] licenses for the disposal of radioactive substances.

(b) Notwithstanding any other provision of this chapter, the Texas Natural Resource Conservation Commission has the sole and exclusive authority to grant, deny, renew, revoke, suspend, amend, or withdraw licenses for the recovery and processing of source material, including the disposal of by-product material pursuant to Subchapter G.

(c) The Texas Natural Resource Conservation Commission may adopt any rules and guidelines reasonably necessary to exercise its authority under this section. In adopting rules and guidelines, the Texas Natural Resource Conservation Commission shall consider the compatibility of those rules and guidelines with federal regulatory programs and the rules and guidelines of the Texas Board of Health.

(d) The Texas Natural Resource Conservation Commission may assess and collect an annual fee for each license and registration and for each application in an amount sufficient to recover its reasonable costs to administer its authority under this chapter.

(e) The Texas Natural Resource Conservation Commission may set and collect an annual fee from the operator of each nuclear reactor or other fixed nuclear facilities in the state that uses special nuclear material. The amount of the fees collected may not exceed the actual expenses that arise from emergency response activities, including training.

(f) The Texas Natural Resource Conservation Commission shall establish by rule the amounts appropriate for the fees collected under this section. The fees collected under this section shall be deposited in the radioactive substance fee fund and reappropriated for use by the commission for expenses incurred by the commission in administering the provisions of this chapter.

SECTION 3. This Act takes effect September 1, 1993.

SECTION 4. (a) On September 1, 1993:

(1) the powers, duties, obligations, functions, and activities of the Texas Board of Health and the Texas Department of Health or the officers or employees of those agencies assigned by Chapter 401, Health and Safety Code, as it relates to the licensing and regulation of source material recovery and processing are transferred to the Texas Natural Resource Conservation Commission;

(2) all personnel, equipment, data, documents, facilities, and other items of the Texas Department of Health pertaining to the licensing and regulation of source material recovery and processing are transferred to the Texas Natural Resource Conservation Commission; and

(3) all appropriations to the Texas Department of Health pertaining to the licensing and regulation of source material recovery and processing are automatically transferred to the Texas Natural Resource Conservation Commission.

(b) The Texas Natural Resource Conservation Commission is the successor to the Texas Department of Health for the enforcement of laws pertaining to the licensing and regulation of source material recovery and processing and shall carry out those duties, responsibilities, functions, and activities as provided by law, including Acts of the 73rd Legislature.

(c) The transfer of duties from the Texas Board of Health and the Texas Department of Health does not affect or impair any act done or obligation, right, license, permit, substantive rule, criterion, standard, requirement, or penalty accrued or existing under former law, and that law remains in effect for any action concerning such obligation, right, license, permit, substantive rule, criterion, standard, requirement, or penalty. An action brought or proceeding commenced before the effective date of this Act is governed by the rules applicable to the action or proceeding before the effective date of this Act. In this subsection, "action or proceeding" includes a contested case commenced before the effective date of this Act and an action or proceeding remanded to the Texas Department of Health by a reviewing court before the effective date of this Act.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 29, 1993, by a viva-voce vote; May 27, 1993, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 28, 1993, House granted request of the Senate; May 30, 1993, Senate adopted Conference Committee Report by a viva-voce vote; passed subject to the provisions of Article III, Section 49a, of the Constitution of Texas; passed the House, with amendments, on May 21, 1993, by a non-record vote; May 28, 1993, House granted request of the Senate for appointment of Conference Committee; May 30, 1993, House adopted Conference Committee Report by a non-record vote; passed subject to the provisions of Article III, Section 49a, of the Constitution of Texas.

Approved June 19, 1993.

Effective Sept. 1, 1993.