

HEALTH AND SAFETY CODE CHAPTER 401. RADIOACTIVE MATERIALS AND OTHER SOURCES OF RADIATION

HEALTH AND SAFETY CODE

TITLE 5. SANITATION AND ENVIRONMENTAL QUALITY

SUBTITLE D. NUCLEAR AND RADIOACTIVE MATERIALS

CHAPTER 401. RADIOACTIVE MATERIALS AND OTHER SOURCES OF RADIATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 401.0005. SHORT TITLE. This chapter may be cited as the Texas Radiation Control Act.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 142, eff. Sept. 1, 1991.

Sec. 401.001. POLICY. In furtherance of the state's responsibility to protect occupational and public health and safety and the environment, it is the policy of the state to institute and maintain:

(1) a regulatory program for sources of radiation that provides for:

(A) compatibility with federal standards and regulatory programs;

(B) a single, effective regulatory system in the state; and

(C) a regulatory system that is to the degree possible compatible with other states' systems; and

(2) a program that permits development and use of sources of radiation for peaceful purposes consistent with public health and safety and environmental protection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 401.002. PURPOSE. It is the purpose of this chapter to carry out the policies stated in Section 401.001 by providing a program to:

(1) ensure effective regulation of sources of radiation for protection of the occupational and public health and safety and the environment;

(2) promote an orderly regulatory pattern in the state, among the states, and between the federal government and the

state, and facilitate intergovernmental cooperation with respect to use and regulation of sources of radiation to minimize regulatory duplication;

(3) establish procedures for assumption and performance of certain regulatory responsibilities with respect to sources of radiation; and

(4) permit maximum use of sources of radiation consistent with public health and safety and environmental protection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 401.003. DEFINITIONS. In this chapter, unless otherwise specifically provided:

(1) "Advisory board" means the radiation advisory board.

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

(3) "By-product material" means:

(A) a radioactive material, other than special nuclear material, that is produced in or made radioactive by exposure to radiation incident to the process of producing or using special nuclear material; and

(B) tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes.

(4) "Commission" means the Texas Commission on Environmental Quality.

(5) "Commissioner" means the commissioner of state health services.

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

(7) "Director" means the director of the radiation control program under the department's jurisdiction.

(8) "Disposal" means, with regard to low-level

radioactive waste, isolation or removal of low-level radioactive waste from mankind and mankind's environment without intent to retrieve that low-level radioactive waste later. The term does not include emissions and discharges under department rules.

(9) "Electronic product" means a manufactured product or device or component part of a manufactured product or device that has an electronic circuit that during operation can generate or emit a physical field of radiation.

(10) "Federal commission" means the United States Nuclear Regulatory Commission.

(11) "Perpetual care account" means the radiation and perpetual care account.

(12) "General license" means a license issued under department rules for which an application is not required to be filed to transfer, acquire, own, possess, or use quantities of or devices or equipment that make use of by-product, source, special nuclear, or other radioactive material.

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

(13) "Local government" means a municipality, county, special district, or other political subdivision of the state.

(14) "Person" includes a legal successor to or representative, agent, or agency of any person but does not include

the federal commission and federal agencies the federal commission licenses or exempts.

(15) "Person affected" means a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government:

(A) is a resident of a county, or a county adjacent to that county, in which nuclear or radioactive material is or will be located; or

(B) is doing business or has a legal interest in land in the county or adjacent county.

(16) "Processing" means the storage, extraction of material, transfer, volume reduction, compaction, or other separation and preparation of low-level radioactive waste for reuse or disposal, including a treatment or activity that renders the waste less hazardous, safer for transport, or amenable to recovery, storage, or disposal.

(17) "Radiation" means one or more of the following:

(A) gamma-rays and X-rays, alpha and beta particles, and other atomic or nuclear particles or rays;

(B) emission of radiation from an electronic device to energy density levels that could reasonably cause bodily harm; or

(C) sonic, ultrasonic, or infrasonic waves emitted from an electronic device or resulting from the operation of an electronic circuit in an electronic device in the energy range to reasonably cause detectable bodily harm.

(18) "Radioactive material" means a naturally occurring or artificially produced solid, liquid, or gas that emits radiation spontaneously.

(19) "Radioactive substance" includes:

(A) by-product material;

(B) naturally occurring radioactive material waste, excluding oil and gas NORM waste;

(C) radioactive material;

(D) low-level radioactive waste;

(E) source material;

(F) source of radiation; and

(G) special nuclear material.

(20) Repealed by Acts 1999, 76th Leg., ch. 1367, Sec. 39, eff. Sept. 1, 1999.

(21) "Registration" includes:

(A) notice to the department of the service or use of an electronic product; and

(B) registration under Section 401.105.

(22) "Source material" means:

(A) uranium, thorium, or other material that the governor by order declares to be source material after the federal commission has determined the material to be source material; or

(B) ore that contains one or more of the materials listed in Subdivision (A) to the degree of concentration that the governor by order declares to be source material after the federal commission has determined the material to be of a degree of concentration to be source material.

(23) "Source of radiation" means radioactive material or a device or equipment that emits or is capable of producing radiation intentionally or incidentally.

(24) "Special nuclear material" means:

(A) plutonium, uranium 233, uranium enriched in the isotope 233 or the isotope 235, and any other material other than source material that the governor by order declares to be special nuclear material after the federal commission determines the material to be special nuclear material; or

(B) material other than source material that is artificially enriched by any of the materials listed in Subdivision (A).

(25) "Specific license" means a license, issued pursuant to an application, to use, manufacture, produce, transfer, receive, acquire, own, possess, process, or dispose of quantities of or devices or equipment using by-product, source, special nuclear, or other radioactive material.

(26) "Naturally occurring radioactive material waste" or "NORM waste" means solid, liquid, or gaseous material or combination of materials, excluding source material, special nuclear material, and by-product material, that:

(A) in its natural physical state spontaneously emits radiation;

(B) is discarded or unwanted; and

(C) is not exempt by department rule adopted under Section 401.106.

(27) "Oil and gas NORM waste" means solid, liquid, or gaseous material or combination of materials, excluding source material, special nuclear material, and by-product material, that:

(A) in its natural physical state spontaneously emits radiation;

(B) is discarded or unwanted;

(C) is not exempt by department rule adopted under Section 401.106; and

(D) constitutes, is contained in, or has contaminated oil and gas waste as that term is defined in Section 91.1011 of the Natural Resources Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 810, Sec. 1, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.208, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1338, Sec. 1, eff. June 20, 1997; Acts 1999, 76th Leg., ch. 1367, Sec. 1, 39, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1009, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 580, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332, Sec. 1, eff. June 15, 2007.

Sec. 401.004. LOW-LEVEL RADIOACTIVE WASTE DEFINED.

(a) Except as provided by Subsection (b), "low-level radioactive waste" means radioactive material that:

(1) is discarded or unwanted and is not exempt by board rule adopted under Section 401.106;

(2) is waste, as that term is defined by 10 C.F.R. Section 61.2; and

(3) is subject to:

(A) concentration limits established under 10

C.F.R. Section 61.55, or compatible rules established by the department or commission, as applicable; and

(B) disposal criteria established under Title 10, Code of Federal Regulations, or established by the department or commission, as applicable.

(b) "Low-level radioactive waste" does not include:

(1) high-level radioactive waste as defined by 10 C.F.R. Section 60.2;

(2) spent nuclear fuel as defined by 10 C.F.R. Section 72.3;

(3) by-product material described by Section 401.003(3)(B);

(4) naturally occurring radioactive material waste that is not oil and gas NORM waste; or

(5) oil and gas NORM waste.

Added by Acts 1999, 76th Leg., ch. 1367, Sec. 2, eff. Sept. 1, 1999.

Sec. 401.005. CODE OF FEDERAL REGULATIONS REFERENCES. A reference in this chapter to the "C.F.R." or the "Code of Federal Regulations" means the Code of Federal Regulations as it existed on September 1, 1999.

Added by Acts 1999, 76th Leg., ch. 1367, Sec. 2, eff. Sept. 1, 1999.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 401.011. RADIATION CONTROL AGENCY. (a) The department is the Texas Radiation Control Agency. The department has jurisdiction over activities and substances regulated under this chapter except as provided by Subsection (b) and Subchapters E, F, G, and K.

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

(1) the disposal of radioactive substances;

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

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

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

(5) sites for the disposal of:

(A) low-level radioactive waste;

(B) by-product material; or

(C) naturally occurring radioactive material waste.

(c) The department and commission each shall exercise its respective powers and duties under this chapter for the protection of the occupational health and safety and the environment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.209, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1338, Sec. 2, eff. June 20, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332, Sec. 2, eff. June 15, 2007.

Sec. 401.012. DESIGNATION OF DIRECTOR. The commissioner shall designate the director of the radiation control program under the department's jurisdiction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.209, eff. Sept. 1, 1995.

Sec. 401.013. DUTIES OF DIRECTOR. The director or the director's designee shall perform the department's functions under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 143, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 448, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.209, eff. Sept. 1, 1995.

Sec. 401.014. EMPLOYEES. The department and commission each within its jurisdiction may employ, compensate, and prescribe the powers and duties of persons as necessary to carry out this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.209, eff. Sept. 1, 1995.

Sec. 401.015. RADIATION ADVISORY BOARD. (a) The radiation advisory board is composed of the following 18 members appointed by the governor:

(1) one representative from industry who is trained in nuclear physics, science, or nuclear engineering;

(2) one representative from labor;

(3) one representative from agriculture;

(4) one representative from the insurance industry;

(5) one individual who is engaged in the use and application of nuclear physics in medicine and is certified by the American Board of Radiology or licensed by the Texas Board of Licensure for Professional Medical Physicists;

(6) one hospital administrator;

(7) one individual licensed by the Texas State Board of Medical Examiners who specializes in nuclear medicine;

(8) one individual licensed by the Texas State Board of Medical Examiners who specializes in pathology;

(9) one individual licensed by the Texas State Board of Medical Examiners who specializes in radiology;

(10) one representative from the nuclear utility industry;

(11) one representative from the radioactive waste industry;

(12) one representative from the petroleum industry;

(13) one health physicist certified by the American Board of Health Physics;

(14) one individual licensed by the State Board of Dental Examiners;

(15) one representative from the uranium mining industry; and

(16) three representatives of the public.

(b) Advisory board members serve for staggered six-year terms.

(c) A person is not eligible to be appointed as a representative of the public on the advisory board if that person or that person's spouse is:

(1) engaged in an occupation in the health care field;
or

(2) employed by, participates in the management of, or has a financial interest, other than as a consumer, in part of the nuclear utility industry or in a business entity or other organization that is licensed under Subchapter F or Subchapter G.

(d) In this subsection, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest. A person may not be a member of the advisory board if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health physics or radiological health; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health physics or radiological health.

(e) A person may not be a member of the advisory board or act as the general counsel to the advisory board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the advisory board.

(f) Appointments to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 554, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1411, Sec. 9.01, eff. Sept. 1, 1999.

Sec. 401.0151. TRAINING FOR ADVISORY BOARD MEMBERS. (a) A person who is appointed to and qualifies for office as a member of the advisory board may not vote, deliberate, or be counted as a member in attendance at a meeting of the advisory board until the person completes a training program that complies with this section.

(b) The training program must provide the person with

information regarding:

- (1) the legislation that created the advisory board;
- (2) the role and functions of the advisory board;
- (3) the rules of the advisory board and applicable rules of the department, with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (4) the requirements of:
 - (A) the open meetings law, Chapter 551, Government Code;
 - (B) the public information law, Chapter 552, Government Code;
 - (C) the administrative procedure law, Chapter 2001, Government Code; and
 - (D) other laws relating to public officials, including conflict-of-interest laws; and
- (5) any applicable ethics policies adopted by the advisory board or the Texas Ethics Commission.

(c) A person appointed to the advisory board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 9.02, eff. Sept. 1, 1999.

Sec. 401.0152. INFORMATION ABOUT STANDARDS OF CONDUCT. The commissioner or the commissioner's designee shall provide to members of the advisory board, as often as necessary, information regarding the requirements for office under this subchapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 9.02, eff. Sept. 1, 1999.

Sec. 401.0153. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the advisory board that a member:

(1) does not have at the time of taking office the qualifications required by Section 401.015(a);

(2) does not maintain during service on the advisory board the qualifications required by Section 401.015(a);

(3) is ineligible for membership under Section 401.015(c), (d), or (e);

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled advisory board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the advisory board.

(b) The validity of an action of the advisory board is not affected by the fact that it is taken when a ground for removal of an advisory board member exists.

(c) If the commissioner has knowledge that a potential ground for removal exists, the commissioner shall notify the advisory board chairman of the potential ground. The advisory board chairman shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the advisory board chairman, the commissioner shall notify the next highest ranking officer of the advisory board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 9.02, eff. Sept. 1, 1999.

Sec. 401.016. OFFICERS. (a) The governor shall designate a member of the advisory board as the advisory board chairman to serve in that capacity at the will of the governor.

(b) The advisory board shall elect from its members a vice-chairman and secretary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 9.03, eff. Sept. 1, 1999.

Sec. 401.017. SALARY; EXPENSES. A member of the advisory

board is not entitled to receive a salary for service on the advisory board but may be reimbursed for actual expenses incurred in attending advisory board meetings or for engaging in authorized advisory board business.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 401.018. MEETINGS. (a) The advisory board shall meet quarterly on dates set by the advisory board.

(b) The advisory board shall hold special meetings that may be called by the advisory board chairman or by five advisory board members.

(c) Advisory board meetings may be held at any designated place in the state determined by the advisory board chairman to best serve the purpose for which the meeting is called.

(d) Each member of the advisory board shall be given timely notice of each advisory board meeting.

(e) A record must be kept of each advisory board meeting.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 554, Sec. 2, eff. Sept. 1, 1997.

Sec. 401.0181. PUBLIC TESTIMONY. The advisory board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the advisory board and to speak on any issue under the jurisdiction of the advisory board.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 9.04, eff. Sept. 1, 1999.

Sec. 401.019. ADVISORY BOARD DUTIES. The advisory board shall:

(1) review and evaluate state radiation policies and programs;

Text of subd. (2) as amended by Acts 1997, 75th Leg., ch. 553, Sec. 1

(2) make recommendations and furnish technical advice that may be required on matters relating to development, use, and regulation of sources of radiation to the department, the Texas

Natural Resource Conservation Commission, the Railroad Commission of Texas, and other state agencies; and

Text of subd. (2) as amended by Acts 1997, 75th Leg., ch. 554, Sec. 3

(2) make recommendations and furnish technical advice to the department, the commission, the Railroad Commission of Texas, and other state agencies that may be required on matters relating to development, use, and regulation of sources of radiation; and

(3) review proposed rules and guidelines of any state agency relating to regulation of sources of radiation and recommend changes in proposed or existing rules and guidelines relating to those matters.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 553, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 554, Sec. 3, eff. June 2, 1997.

Sec. 401.020. DUTY OF AGENCIES WITH RADIATION-RELATED PROGRAMS. A state agency shall:

(1) consider the recommendations and advice of the advisory board that concern the agency's policies or programs related to the development, use, or regulation of a source of radiation; and

(2) provide the advisory board a written response to the recommendations or advice.

Added by Acts 1997, 75th Leg., ch. 553, Sec. 2, eff. June 2, 1997.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 401.051. ADOPTION OF RULES AND GUIDELINES. The board and commission each within its jurisdiction may adopt rules and guidelines relating to control of sources of radiation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.210, eff. Sept. 1, 1995.

Sec. 401.052. RULES FOR TRANSPORTATION AND ROUTING.

(a) The board shall adopt rules that provide for transportation

and routing of radioactive material and waste in this state.

(b) Rules adopted under this section for low-level radioactive waste must:

(1) to the extent practicable, be compatible with United States Department of Transportation and United States Nuclear Regulatory Commission regulations relating to the transportation of low-level radioactive waste;

(2) require each shipper and transporter of low-level radioactive waste to adopt an emergency plan approved by the department for responding to transportation accidents;

(3) require the notification and reporting of accidents to the department and to local emergency planning committees in the county where the accident occurs;

(4) require each shipper to adopt a quality control program approved by the department to verify that shipping containers are suitable for shipment to a licensed disposal facility;

(5) assess a fee on shippers for shipments to a Texas low-level radioactive waste disposal facility of low-level radioactive waste originating in Texas or out-of-state; and

(6) require a transporter to carry liability insurance in an amount the board determines is sufficient to cover damages likely to be caused by a shipping accident in accordance with regulations imposed by the United States Department of Transportation and the United States Nuclear Regulatory Commission.

(c) In adopting rules under this section, the board shall consult with the advisory board and the commission.

Text of subsec. (d) as amended by Acts 2003, 78th Leg., ch. 580,

Sec. 2

(d) Fees assessed under this section:

(1) may not exceed \$10 per cubic foot of shipped low-level radioactive waste;

(2) shall be collected by the department and deposited to the credit of the perpetual care account;

(3) shall be used exclusively by the department for emergency planning for and response to transportation accidents involving low-level radioactive waste; and

(4) shall be suspended when the amount of fees collected reaches \$500,000, except that if the balance of fees collected is reduced to \$350,000 or less, the assessments shall be reinstated to bring the balance of fees collected to \$500,000.

Text of subsec. (d) as amended by Acts 2003, 78th Leg., ch. 1067,
Sec. 2

(d)(1) Fees assessed under the rules adopted under Subsection (b)(5):

(A) may not exceed \$10 per cubic foot of shipped low-level radioactive waste;

(B) shall be collected by the compact waste disposal facility license holder under Subchapter F and remitted to the commission for deposit to the credit of the perpetual care account; and

(C) may be used only by the department for emergency planning for and response to transportation accidents involving low-level radioactive waste.

(2) Fee assessments under the rules adopted under Subsection (b)(5) shall be suspended when the amount of fees collected reaches \$500,000, except that if the balance of fees collected is reduced to \$350,000 or less, the assessments shall be reinstated to bring the balance of fees collected to \$500,000.

(e) Money expended from the perpetual care account to respond to accidents involving low-level radioactive waste must be reimbursed to the perpetual care account by the responsible shipper or transporter according to rules adopted by the board.

(f) In this section, "shipper" means a person who generates low-level radioactive waste and ships or arranges with others to ship the waste to a disposal site.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 878, Sec. 23, eff. June 18, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.211, eff. Sept. 1, 1995; Acts

1999, 76th Leg., ch. 1367, Sec. 3, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 580, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 2, eff. Sept. 1, 2003.

Sec. 401.0525. GROUNDWATER PROTECTION STANDARDS. (a) The commission shall adopt and enforce groundwater protection standards compatible with federal standards adopted under the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 et seq.).

(b) In adopting any standards relating to nonradioactive constituents the commission shall consider the compatibility of those standards with the commission's groundwater protection standards adopted under other programs.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 144, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.212, eff. Sept. 1, 1995.

Sec. 401.053. CLASSIFICATION SYSTEM FOR LOW-LEVEL RADIOACTIVE WASTE. The department may establish a classification system for low-level radioactive waste that is based on radiological, chemical, and biological characteristics and on physical state so that low-level radioactive waste can be managed safely and compatibly.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1367, Sec. 4, eff. Sept. 1, 1999.

Sec. 401.054. NOTICE AND HEARING. (a) The department shall provide notice and an opportunity for a hearing on a matter under its jurisdiction as provided by its formal hearing procedures and Chapter 2001, Government Code, on written request of a person affected by any of the following procedures:

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

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

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

(b) This section does not apply to license or registration

activities for which other notice and hearing procedures are required by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.213, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 46, eff. Sept. 1, 1997.

Sec. 401.055. ORDERS. The department or commission shall issue and modify necessary orders in connection with proceedings conducted by the agency under this chapter on matters under the agency's jurisdiction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.214, eff. Sept. 1, 1995.

Sec. 401.056. EMERGENCY ORDERS. (a) If the department or commission finds an emergency exists as a result of a matter under its jurisdiction that requires immediate action to protect the public health and safety and the environment, the agency, without notice or hearing, may issue an order stating the existence of the emergency and requiring that action be taken at the agency's direction to meet the emergency.

(b) The emergency order is effective immediately.

(c) A person to whom an emergency order is directed shall comply immediately with that order.

(d) The agency shall provide a person to whom an emergency order is directed an opportunity for a hearing on written application to the agency not later than the 30th day following the date of the emergency order.

(e) The agency shall hold a requested hearing not earlier than the 11th day and not later than the 20th day following the date of receipt of the hearing application.

(f) The agency shall continue, modify, or revoke an emergency order based on the hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.215, eff. Sept. 1, 1995.

Sec. 401.057. RECORDS. (a) The department or commission,

within its jurisdiction, shall require each person who possesses or uses a source of radiation to maintain:

(1) records relating to the use, receipt, storage, transfer, or disposal of that source of radiation;

(2) appropriate records that show the radiation exposure of each individual for whom personnel monitoring is required by the agency's rules, licenses, registrations, and orders; and

(3) other records the agency requires.

(b) The board or commission by rule may provide exemptions to the records requirements under Subsections (a)(1) and (3).

(c) Copies of records required to be maintained under Subsection (a) shall be submitted to the agency on request.

(d) A person who possesses or uses a source of radiation shall furnish to each employee for whom personnel monitoring is required a copy of the employee's personal exposure record at any time the employee has received exposure that exceeds the maximum permissible levels provided by the agency's rules and on termination of employment. The person shall furnish to an employee on request a copy of the employee's annual exposure record.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.216, eff. Sept. 1, 1995.

Sec. 401.058. INFORMATION. (a) The department shall collect and disseminate information relating to the transportation of sources of radiation. The department and the commission each within its jurisdiction shall collect and disseminate information relating to the control of sources of radiation.

(b) The department and commission each, as part of the collection and dissemination of information, shall maintain:

(1) a file of license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(2) a file of registrants possessing sources of radiation requiring registration under this chapter and any administrative or judicial action relating to those registrants; and

(3) a file of pending and adopted rules and guidelines relating to regulation of sources of radiation and proceedings relating to those rules and guidelines.

(c) The commission, as part of the collection and dissemination of information, shall maintain a file of:

(1) known locations in this state at which radioactive material has been disposed of and at which soil and facilities are contaminated; and

(2) information on inspection reports relating to the radioactive material disposed of and radiation levels at those locations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.216, eff. Sept. 1, 1995.

Sec. 401.059. PROGRAM DEVELOPMENT. (a) The department shall develop programs to evaluate hazards associated with the use of sources of radiation.

(b) The department and commission shall develop programs within their respective jurisdictions with due regard for compatibility with federal programs for the regulation of sources of radiation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.217, eff. Sept. 1, 1995.

Sec. 401.060. STUDIES, INVESTIGATIONS, ETC. The department and commission each within its jurisdiction shall encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to the control of sources of radiation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.218, eff. Sept. 1, 1995.

Sec. 401.061. LOW-LEVEL RADIOACTIVE WASTE STUDIES. The department and commission each within its jurisdiction shall conduct studies of the need for low-level radioactive waste processing and disposal facilities and technologies as the agency considers necessary for minimizing the risks to the public and the

environment from low-level radioactive waste management.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.218, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 4, eff. Sept. 1, 1999.

Sec. 401.062. TRAINING PROGRAMS. (a) The department and commission each may institute training programs to qualify their personnel to carry out this chapter.

(b) The department and commission each may make those personnel available to participate in a program of the federal government, another state, or an interstate agency to carry out this chapter's purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.218, eff. Sept. 1, 1995.

Sec. 401.063. GENERAL INSPECTION AUTHORITY. (a) The department or commission or the agency's representative may enter public or private property at reasonable times to determine whether, in a matter under the agency's jurisdiction, there is compliance with this chapter and the agency's rules, licenses, registrations, and orders under this chapter.

(b) The department or commission or the agency's representative may enter an area under the jurisdiction of the federal government only with the concurrence of the federal government or its designated representative.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.218, eff. Sept. 1, 1995.

Sec. 401.064. INSPECTION OF X-RAY EQUIPMENT. (a) The board shall adopt rules relating to the frequency of department inspections of electronic products.

(b) In adopting the rules, the board shall consider the threat to human health and safety that the electronic products may present.

(c) The board shall adopt an inspection interval of five years for routine inspections of electronic products that present a minimal threat to human health and safety.

(d) The board by rule shall require a person who inspects medical, podiatric medical, dental, veterinary, or chiropractic electronic products to have special training in the design and uses of the products.

(e) The department shall conduct inspections of medical, podiatric medical, dental, veterinary, and chiropractic electronic products in a manner designed to cause as little disruption of a medical, podiatric medical, dental, veterinary, or chiropractic practice as is practicable.

(f) In adopting rules under this section relating to the inspection of medical, podiatric medical, dental, veterinary, and chiropractic electronic products, the board shall solicit and follow the recommendations of the State Board of Dental Examiners for the inspections of dental electronic products, the Texas State Board of Podiatric Medical Examiners for the inspection of podiatric medical electronic products, the Texas State Board of Medical Examiners for the inspection of medical electronic products, the Texas State Board of Veterinary Medical Examiners for the inspection of medical electronic products used in the practice of veterinary medicine, and the State Board of Chiropractic Examiners for the inspection of chiropractic electronic products, unless in conflict with federal statutes or federal rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 207, Sec. 1, eff. May 19, 1993; Acts 1995, 74th Leg., ch. 965, Sec. 80, eff. Sept. 1, 1995.

Sec. 401.065. INSPECTION AGREEMENTS. The department or commission, in matters under its jurisdiction, with the approval of the governor, may enter into an agreement with the federal government, another state, or an interstate agency under which the state, in cooperation with the other parties to the agreement, performs inspections or other functions relating to the control of sources of radiation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.219, eff. Sept. 1, 1995.

Sec. 401.066. SURVEILLANCE PLANS. The department shall

prepare and update emergency and environmental surveillance plans for fixed nuclear facilities in this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 401.067. LOCAL GOVERNMENT INSPECTIONS. (a) An agent or employee of a local government may examine and copy during regular business hours records relating to activities licensed under Subchapter F. Examinations and copying of records must be done at the local government's expense and subject to limitations in Chapter 552, Government Code.

(b) Records copied under this section are public records unless the record's owner shows to the satisfaction of the commission that the records if made public will divulge trade secrets. On such a showing, the commission shall consider the copied records confidential.

(c) A local government agent or employee may not enter private property that has management in residence unless the agent or employee notifies the management, or person in charge, of the agent's or employee's presence and exhibits proper credentials. The agent or employee shall observe the rules of the establishment being inspected relating to safety, internal security, and fire protection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), 11.220, eff. Sept. 1, 1995.

Sec. 401.068. IMPOUNDING SOURCES OF RADIATION. The department or commission, in an emergency relating to a substance or activity under the agency's jurisdiction, may impound or order impounded sources of radiation that are in the possession of a person who is not equipped to observe or fails to observe this chapter or the agency's rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.221, eff. Sept. 1, 1995.

Sec. 401.069. MEMORANDUM OF UNDERSTANDING. The board or commission must adopt as a rule any memorandum of understanding

between the department or commission, as appropriate, and another state agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.221, eff. Sept. 1, 1995.

Sec. 401.070. RELATIONSHIP WITH OTHER ENTITIES. The department shall advise, consult, and cooperate, on matters under its jurisdiction, with other state agencies, the federal government, other states, interstate agencies, local governments, and groups concerned with the control and transportation of sources of radiation. The commission shall advise, consult, and cooperate with those entities on matters under its jurisdiction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.221, eff. Sept. 1, 1995.

Sec. 401.071. GENERAL POWERS OF COMMISSION IN RELATION TO LOW-LEVEL RADIOACTIVE WASTE. (a) The commission may:

(1) conduct, request, and participate in studies, investigations, and research relating to selection, preparation, construction, operation, maintenance, decommissioning, closing, and financing of disposal sites for and disposal of low-level radioactive waste; and

(2) advise, consult, and cooperate with the federal government, the state, interstate agencies, local governmental entities in this state, and private entities on matters involving the disposal of low-level radioactive waste.

(b) In carrying out its duties under this section the commission may:

(1) apply for, receive, accept, and administer gifts, grants, and other funds available from any source; and

(2) contract with the federal government, the state, interstate agencies, local governmental agencies, and private entities.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 3, eff. Sept. 1, 2003.

SUBCHAPTER D. LICENSING AND REGISTRATION

Sec. 401.101. LICENSE AND REGISTRATION REQUIREMENT. A

person may not use, manufacture, produce, transport, transfer, receive, acquire, own, possess, process, or dispose of a source of radiation unless that person has a license, registration, or exemption from the department or commission as provided by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.222, eff. Sept. 1, 1995.

Sec. 401.102. APPLICATION TO NUCLEAR REACTOR FACILITIES.

Nuclear reactor facilities licensed by the federal commission are not required to be licensed or registered under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.222, eff. Sept. 1, 1995.

Sec. 401.103. RULES AND GUIDELINES FOR LICENSING AND REGISTRATION. (a) The board shall adopt rules and guidelines that provide for licensing and registration for the transportation of sources of radiation.

(b) The board and commission each within its jurisdiction shall adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation.

(c) In adopting rules and guidelines, the board and commission shall consider the compatibility of those rules and guidelines with federal regulatory programs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.222, eff. Sept. 1, 1995.

Sec. 401.104. LICENSING AND REGISTRATION RULES.

(a) Except as provided by Subsections (b) and (e), the board by rule shall provide for the general or specific licensing of:

- (1) radioactive material; or
- (2) devices or equipment using radioactive material.

(b) Except as provided by Subsection (e), the commission by rule shall provide for licensing for the disposal of radioactive substances.

(c) The board or commission shall provide in its rules for the issuance, amendment, suspension, and revocation of licenses.

(d) The board or commission, within its jurisdiction, may require the registration or licensing of other sources of radiation.

(e) The board or commission may not require a license for a person that is a party to an order issued under Section 361.188 or 361.272 for sites subject to Subchapter F, Chapter 361, or an agreement entered into under Section 361.606. This subsection does not exempt the person from complying with technical standards that a holder of a license otherwise required by this chapter for the particular activity is required to meet. The exemption granted by this subsection applies only to the assessment and remediation of the contamination at the site.

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.222, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1338, Sec. 3, eff. June 20, 1997; Acts 1999, 76th Leg., ch. 1367, Sec. 5, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 4, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332, Sec. 3, eff. June 15, 2007.

Sec. 401.105. RECOGNITION OF OTHER LICENSES. The board or commission, within its jurisdiction, by rule may recognize other federal or state licenses the board or commission, as appropriate, considers desirable, subject to registration requirements the board or commission, as appropriate, may prescribe.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.222, eff. Sept. 1, 1995.

Sec. 401.106. EXEMPTION FROM LICENSING OR REGISTRATION REQUIREMENTS OR FROM APPLICATION OF RULE. (a) The board or commission by rule may exempt a source of radiation or a kind of use or user from the licensing or registration requirements provided by this chapter and under the agency's jurisdiction if the board or

commission finds that the exemption of that source of radiation or kind of use or user will not constitute a significant risk to the public health and safety and the environment.

(b) The department or commission, as applicable, may exempt a source of radiation or a kind of use or user from the application of a rule adopted by the department or commission under this chapter if the department or commission, respectively, determines that the exemption:

(1) is not prohibited by law; and

(2) will not result in a significant risk to public health and safety and the environment.

(c) Notwithstanding any other law, the commission may, on request or its own initiative, authorize on-site disposal of low-level radioactive waste on a specific basis at any site at which low-level radioactive waste disposal operations began before September 1, 1989, if after evaluation of the specific characteristics of the waste, the disposal site, and the method of disposal, the commission finds that the continuation of the disposal activity will not constitute a significant risk to the public health and safety and to the environment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1367, Sec. 6, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332, Sec. 4, eff. June 15, 2007.

Sec. 401.107. LICENSE APPLICATION. (a) An application for a specific license issued by the board or commission must be in writing and must state the information that the board or commission, as appropriate, by rule determines to be necessary to decide the technical, insurance, and financial qualifications or any other of the applicant's qualifications the issuing agency considers reasonable or necessary to protect the occupational and public health and safety and the environment.

(b) The issuing agency at any time after an application is filed with the agency, and if the application is for a renewal, before the expiration of the license, may require further written

statements and may make inspections the agency considers necessary to determine if the license should be granted or denied or if the current license should be modified, suspended, or revoked.

(c) The applicant or license holder shall sign each license application and each statement, and the agency may require the applicant or license holder to make the application or statement under oath.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.223, eff. Sept. 1, 1995.

Sec. 401.108. FINANCIAL QUALIFICATIONS. (a) Before a license is issued or renewed by the commission, the applicant shall demonstrate to the commission that the applicant is financially qualified to conduct the licensed activity, including any required decontamination, decommissioning, reclamation, and disposal, by posting security acceptable to the commission.

(b) A license holder shall submit to the department or commission, as appropriate, at intervals required by board or commission rules or the license, proof that the license holder has updated, as appropriate, the security posted under Subsection (a).

(c) The commission at regular intervals not to exceed five years shall reevaluate the qualifications and security provided by a license holder under Subchapter F or Subchapter G. The reevaluation may coincide with license renewal procedures if renewal and reevaluation occur in the same year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.223, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1009, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332, Sec. 5, eff. June 15, 2007.

Sec. 401.109. SECURITY. (a) The department or commission may require a holder of a license issued by the agency to provide security acceptable to the agency to assure performance of the license holder's obligations under this chapter. The department or commission shall deposit security provided under this section to

the credit of the perpetual care account. The department or commission by rule shall provide that any evidence of security must be made payable to the credit of the perpetual care account.

(b) The commission shall require a holder of a license that authorizes the disposal of radioactive substances to provide security acceptable to the commission to assure performance of the license holder's obligations under this chapter.

(c) The amount and type of security required shall be determined under the agency's rules in accordance with criteria that include:

(1) the need for and scope of decontamination, decommissioning, reclamation, or disposal activity reasonably required to protect the public health and safety and the environment;

(2) reasonable estimates of the cost of decontamination, decommissioning, reclamation, and disposal as provided by Section 401.303; and

(3) the cost of perpetual maintenance and surveillance, if any.

(d) In this section "security" includes:

(1) a cash deposit;

(2) a surety bond;

(3) a certificate of deposit;

(4) an irrevocable letter of credit;

(5) a deposit of government securities;

(6) an insurance policy, the form and content of which is acceptable to the agency; and

(7) other security acceptable to the agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.223, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 580, Sec. 3, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 5, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332, Sec. 6, eff. June 15, 2007.

Sec. 401.110. DETERMINATION ON LICENSE. (a) In making a

determination whether to grant, deny, amend, renew, revoke, suspend, or restrict a license or registration, the commission may consider an applicant's or license holder's technical competence, financial qualifications, and compliance history under the method for evaluation of compliance history developed by the commission under Section 5.754, Water Code.

(b) In making a determination whether to grant, deny, amend, renew, revoke, suspend, or restrict a license or registration, the department may consider the technical competence, financial qualifications, and compliance history of an applicant, license holder, or registration holder. After an opportunity for a hearing, the department shall deny an application for a license or registration, license or registration amendment, or license or registration renewal if the applicant's compliance history reveals a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process through significant violations of this chapter or the department's rules adopted under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.223, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 16.16, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1009, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 414, Sec. 1, eff. Sept. 1, 2003.

Sec. 401.111. CRITERIA FOR CERTAIN UNSUITABLE NEW SITES.

(a) The commission, in adopting rules for the issuance of licenses under the commission's jurisdiction for new sites for processing or disposal of radioactive substances from other persons, shall adopt criteria for the designation of unsuitable sites, including:

- (1) flood hazard areas;
- (2) areas with characteristics of discharge from or recharge of a groundwater aquifer system; or
- (3) areas in which soil conditions make spill cleanup impracticable.

(b) The commission shall consult 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 commission 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.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.223, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 7, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332, Sec. 7, eff. June 15, 2007.

Sec. 401.112. LOW-LEVEL RADIOACTIVE WASTE PROCESSING OR DISPOSAL LICENSE APPLICATION AND CONSIDERATIONS. (a) The commission, 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 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 applicant;

(5) the applicant's qualifications, including:

(A) financial and technical qualifications and compliance history under the method for evaluation of compliance history developed by the commission under Section 5.754, Water Code, for an application to the commission; and

(B) the demonstration of financial qualifications under Section 401.108;

(6) background monitoring plans for the proposed site;

(7) suitability of facilities associated with the

proposed activities;

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

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

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

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

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

(13) decommissioning and postclosure care plans;

(14) security plans;

(15) worker monitoring and protection plans;

(16) emergency plans; and

(17) a monitoring program for applicants that includes prelicense and postlicense monitoring of background radioactive and chemical characteristics of the soils, groundwater, and vegetation.

(b) An applicant for the specific license must submit with the application information necessary for the commission to consider the factors under Subsection (a).

(c) The commission by rule shall provide specific criteria for the different types of licensed low-level radioactive waste activities for the listed factors and may include additional factors and criteria that the commission determines necessary for full consideration of a license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.223, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 8, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 965, Sec. 16.17, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 414, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332, Sec. 8, eff. June 15, 2007.

Sec. 401.113. ENVIRONMENTAL ANALYSIS. (a) Before a hearing under Section 401.114 begins, the commission shall prepare or have prepared a written analysis of the effect on the environment of a proposed licensed activity that the commission determines has a significant effect on the human environment.

(b) The commission shall make the analysis available to the public not later than the 31st day before the date of a hearing under Section 401.114.

(c) The analysis must include:

(1) an assessment of radiological and nonradiological effects of the activity on the public health;

(2) an assessment of any effect on a waterway or groundwater resulting from the activity;

(3) consideration of alternatives to the activities to be conducted under the license; and

(4) consideration of the long-term effects associated with activities, including decommissioning, decontamination, and reclamation impacts, including the management of low-level radioactive waste, to be conducted under the license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.224, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 9, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332, Sec. 9, eff. June 15, 2007.

Sec. 401.114. NOTICE AND HEARING. (a) Before the commission grants or renews a license to process or dispose of low-level radioactive waste from other persons, the commission shall give notice and shall provide an opportunity for a public hearing in the manner provided by the commission's formal hearing procedure and Chapter 2001, Government Code.

(b) In addition to other notice, the commission 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 shall mail, by certified mail in the manner provided by the commission'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 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.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.225, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 10, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332, Sec. 10, eff. June 15, 2007.

Sec. 401.115. LICENSES FROM OTHER AGENCIES. A holder of a license to operate a facility to process or dispose of low-level radioactive waste may not operate the facility until the holder has obtained all other required licenses or permits from other agencies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1367, Sec. 11, eff. Sept. 1, 1999.

Sec. 401.116. LICENSE AMENDMENT. (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 publish notice of the license amendment once in the Texas Register and in a newspaper of general circulation in the county in which the licensed activity is located and shall give notice to any person who has notified the agency, in advance, of the desire to receive notice of proposed amendment of the license.

(c) Notice under this section must include:

(1) the identity of the license holder;

(2) identification of the license; and

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

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.226, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 12, eff. Sept. 1, 1999.

Sec. 401.117. CONSTRUCTION LIMITATION. The commission shall prohibit major construction relating to activities to be permitted under a license issued by the commission to process or dispose of low-level radioactive waste from other persons until the requirements in Sections 401.113 and 401.114 are completed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.227, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 13, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332, Sec. 11, eff. June 15, 2007.

Sec. 401.118. LICENSE FORM AND CONTENT. (a) The board or commission shall prescribe the form and the terms for each license it issues.

(b) Each license is subject to amendment, revision, or modification by rule or order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.228, eff. Sept. 1, 1995.

Sec. 401.119. LICENSE TRANSFER. A license issued by the department or commission may be assigned only to a person qualified under rules of the issuing agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.229, eff. Sept. 1, 1995.

SUBCHAPTER E. MANAGEMENT OF LOW-LEVEL RADIOACTIVE WASTE

Sec. 401.151. COMPATIBILITY WITH FEDERAL STANDARDS. The department and commission each shall assure that the management of low-level radioactive waste under their respective jurisdictions is compatible with applicable federal commission standards.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.230, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 15, eff. Sept. 1, 1999.

Sec. 401.152. CORRECTIVE ACTION AND MEASURES. (a) If the department or commission, under procedures provided by Section 401.056, finds that low-level radioactive waste under its jurisdiction threatens the public health and safety and the environment and that the license holder managing the low-level radioactive waste is unable to remove the threat, the agency by order may require any action, including a corrective measure, that is necessary to remove the threat.

(b) The agency 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 agency 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 license holder;
- (2) convert an amount of security into cash, as necessary; and
- (3) disburse from the security in the perpetual care account the amount necessary to pay the costs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.230, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 16, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 580, Sec. 4, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 6, eff. Sept. 1, 2003.

SUBCHAPTER F. SPECIAL PROVISIONS CONCERNING LOW-LEVEL RADIOACTIVE
WASTE DISPOSAL

Sec. 401.2005. DEFINITIONS. In this subchapter:

(1) "Compact waste" means low-level radioactive waste that:

(A) is generated in a host state or a party state; or

(B) is not generated in a host state or a party state but has been approved for importation to this state by the compact commission under Section 3.05 of the compact established under Section 403.006.

(2) "Compact waste disposal facility" means the low-level radioactive waste disposal facility licensed by the commission under this subchapter for the disposal of compact waste.

(3) "Disposal facility site" means the tract of land on which is located the compact waste disposal facility and the federal facility waste disposal facility, if applicable. The term includes the immediate area surrounding the facility or facilities.

(4) "Federal facility waste" means low-level radioactive waste that is the responsibility of the federal government under the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. Sections 2021b-2021j).

(5) "Federal facility waste disposal facility" means a facility for the disposal of federal facility waste licensed under Section 401.216.

(6) "Host state" has the meaning assigned by Section 2.01 of the compact established under Section 403.006.

(7) "Party state" has the meaning assigned by Section 2.01 of the compact established under Section 403.006.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.201. REGULATION OF LOW-LEVEL RADIOACTIVE WASTE DISPOSAL. The commission shall directly regulate the disposal of low-level radioactive waste in accordance with this subchapter. The person making the disposal shall comply with this subchapter and commission rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 19, eff. Sept. 1, 1999; Acts

2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.202. LICENSING AUTHORITY. (a) The commission may grant, deny, renew, revoke, suspend, or withdraw licenses for the disposal of low-level radioactive waste from other persons and for the processing of that waste.

(b) The commission shall receive applications for and may issue not more than one license for a single compact waste disposal facility. The commission may issue the license only for a facility that meets:

(1) requirements for licensing provided by this subchapter and by commission rules; and

(2) requirements for disposal adopted by the commission that meet federal requirements for disposal.

(c) Except as provided by Section 401.216, the commission shall provide that the compact waste disposal facility license authorizes only the disposal of compact waste.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 143, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 19, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332, Sec. 12, eff. June 15, 2007.

Sec. 401.204. ACQUISITION OF PROPERTY. (a) An application for a compact waste disposal facility license may not be considered unless the applicant has acquired the title to and any interest in land and buildings as required by commission rule.

(b) If an applicant for a compact waste disposal license is unsuccessful in acquiring a mineral right that the rules adopted under Subsection (a) require the applicant to acquire, the commission may allow the applicant, to the extent permissible under federal law, to enter into a surface use agreement that restricts mineral access, including slant drilling and subsurface mining, to the extent necessary to prevent intrusion into the disposal

facility site.

(c) If an applicant cannot reach a surface use agreement described by Subsection (b) with a private landowner, the attorney general shall, on request of the commission, institute condemnation proceedings as provided under Chapter 21, Property Code, to acquire fee simple interest in the mineral right.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 19, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.205. RESPONSIBILITIES OF PERSONS LICENSED TO DISPOSE OF LOW-LEVEL RADIOACTIVE WASTE. (a) The compact waste disposal facility license holder shall:

(1) arrange for and pay the costs of management, control, stabilization, and disposal of compact waste and the decommissioning of the licensed activity;

(2) convey to the state when the license is issued all required right, title, and interest in land and buildings acquired under commission rules adopted under Section 401.204, together with requisite rights of access to that property; and

(3) formally acknowledge before termination of the license the conveyance to the state of the right, title, and interest in compact waste located on the property conveyed.

(b) The compact waste disposal facility license holder, if licensed under Section 401.216 to dispose of federal facility waste, shall:

(1) arrange for and pay the costs of management, control, stabilization, and disposal of federal facility waste and the decommissioning of the licensed federal facility waste disposal activity;

(2) on decommissioning of the licensed federal facility waste disposal activity, convey to the federal government, as provided by the federal Nuclear Waste Policy Act of 1982, Subtitle D (42 U.S.C. Section 10171 et seq.), as amended, all required right, title, and interest in land and buildings acquired under commission rules under Section 401.204, together with

requisite rights of access to that property;

(3) formally acknowledge before termination of the license the conveyance to the federal government of the right, title, and interest in radioactive waste located on the property conveyed; and

(4) before accepting federal facility waste, submit to the commission a written agreement, signed by an official of the federal government, stating that the federal government will assume all required right, title, and interest in land and buildings acquired under commission rules under Section 401.204 for the disposal of federal facility waste, together with requisite rights of access to the land and buildings, in accordance with the federal Nuclear Waste Policy Act of 1982, Subtitle D (42 U.S.C. Section 10171 et seq.), as amended.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 19, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.2051. CONVEYANCE OF WASTE. (a) The compact waste disposal facility license holder shall convey to the state at no cost to the state title to the compact waste delivered to the disposal facility for disposal at the time the waste is accepted at the site. Acceptance occurs when the acceptance criteria specified in the license have been satisfied. This section does not apply to federal facility waste accepted at a federal facility waste disposal facility.

(b) The title and all related rights and interest in compact waste conveyed under this section are the property of the commission on the state's behalf. The commission may administer the waste as property in the name of the state.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.206. RESIDENT INSPECTOR. (a) The compact waste disposal facility license holder shall reimburse the commission for the salary and other expenses of two or more resident inspectors employed by the commission.

(b) The commission may require that the compact waste disposal facility license holder provide facilities at the disposal site for the resident inspectors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 20, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.207. OUT-OF-STATE WASTE. The compact waste disposal facility license holder may not accept low-level radioactive waste generated in another state for disposal under a license issued by the commission unless the waste is:

(1) accepted under a compact to which the state is a contracting party;

(2) federal facility waste that the license holder is licensed to dispose of under Section 401.216; or

(3) generated from manufactured sources or devices originating in this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 21, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.209. ACQUISITION AND OPERATION OF LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITES. (a) The commission may acquire the fee simple title in land, affected mineral rights, and buildings at which low-level radioactive waste can be or is being disposed of in a manner consistent with public health and safety and the environment.

(b) Property acquired under this section may be used only for disposing of low-level radioactive waste until the commission determines that another use would not endanger the health, safety, or general welfare of the public or the environment.

(c) The commission may lease property acquired under this section for operating a disposal site for low-level radioactive waste.

(d) The right, title, and interest in low-level radioactive

waste accepted for disposal at property and facilities acquired under this section and any other interest acquired under this chapter are the property of the commission, acting on behalf of the state, and shall be administered and controlled by the commission in the name of the state.

(e) A right, title, or interest acquired under this chapter does not vest in any fund created by the Texas Constitution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 145, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 21, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.210. TRANSFER COSTS OF PROPERTY. Low-level radioactive waste and land and buildings transferred to the state or to the federal government under this chapter shall be transferred to the state or to the federal government without cost, other than administrative and legal costs incurred in making the transfer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 21, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.211. LIABILITY. (a) The transfer of the title to low-level radioactive waste and land and buildings to the state or to the federal government does not relieve a license holder of liability for any act or omission performed before the transfer or while the low-level radioactive waste or land and buildings are in the possession and control of the license holder.

(b) The acceptance, storage, or disposal of federal facility waste by the compact waste disposal facility license holder at a federal facility waste disposal facility does not create any liability under state law on the part of the state, or on the part of any officer or agency of the state, for damages, removal, or remedial action with respect to the land, the facility, or the waste accepted, stored, or disposed of.

(c) The compact waste disposal facility license must require the license holder to indemnify the state for any liability imposed on the state under state or federal law, as required by the commission for the disposal of federal facility waste.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 21, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.212. MONITORING, MAINTENANCE, AND EMERGENCY MEASURES. The commission may undertake monitoring, maintenance, and emergency measures that are necessary to protect the public health and safety and the environment in connection with low-level radioactive waste and property for which it has assumed custody.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 21, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.213. INTERSTATE COMPACTS. The commission shall cooperate with and encourage the use of interstate compacts, including the Southern States Energy Board, to develop regional sites that divide among the states the disposal burden of low-level radioactive waste generated in the region.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 21, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.214. REGIONAL DISPOSAL FACILITY UNDER COMPACT. The compact waste disposal facility licensed under this subchapter is the regional disposal facility established and operated under the compact established under Chapter 403 for purposes of the federal Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. Sections 2021b-2021j).

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.215. ACCEPTANCE OF LOW-LEVEL RADIOACTIVE WASTE. Subject to limitations provided by Sections 401.207 and 401.248, the compact waste disposal facility shall accept for disposal all compact waste that is presented to it and that is properly processed and packaged.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.216. FEDERAL FACILITY WASTE DISPOSAL. (a) The commission may license the compact waste disposal facility license holder to dispose of federal facility waste. The commission may license federal facility waste disposal only at a separate and distinct facility that is operated exclusively for the disposal of federal facility waste and that is adjacent to the compact waste disposal facility.

(b) For the first five years after a license under this section is issued, the commission shall limit the overall capacity of the federal facility waste disposal facility to not more than three million cubic yards. Of that amount, the commission shall limit the total volume of waste accepted at the federal facility waste disposal facility that must be disposed of in accordance with Section 401.218 to not more than 300,000 cubic yards.

(c) Unless the commission makes an affirmative finding that increasing the capacity of the federal facility waste disposal facility would pose a significant risk to human health, public safety, or the environment, on the fifth anniversary of the date the license under this section is issued, the commission shall increase the overall capacity of the federal facility waste disposal facility by three million cubic yards, for a total capacity of six million cubic yards, and shall increase the acceptable volume of waste that must be disposed of in accordance with Section 401.218 by 300,000 cubic yards, for a total volume of 600,000 cubic yards.

(d) The commission may not allow commingling of compact waste and federal facility waste.

(e) The compact waste disposal facility license holder may not accept federal facility waste at a federal facility waste disposal facility until the license holder begins accepting compact

waste at the compact waste disposal facility.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.217. LOCATION OF DISPOSAL FACILITY SITE. The commission may not issue a license for a compact waste disposal facility or license the operation of a federal facility waste disposal facility if the disposal facility site is located:

(1) in a county any part of which is located 62 miles or less from an international boundary;

(2) in a county in which the average annual rainfall is greater than 20 inches;

(3) in a county that adjoins river segment 2309, 2310, or 2311 as identified by the commission in the Texas Surface Water Quality Standards, 30 T.A.C. Section 307.10(3);

(4) in a 100-year flood plain; or

(5) less than 20 miles upstream of or up-drainage from the maximum elevation of the surface of a reservoir project that:

(A) has been constructed or is under construction by the United States Bureau of Reclamation or the United States Army Corps of Engineers; or

(B) has been approved for construction by the Texas Water Development Board as part of the state water plan under Subchapter C, Chapter 16, Water Code.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.218. DISPOSAL OF CERTAIN WASTE. (a) In this section, "Class A low-level radioactive waste," "Class B low-level radioactive waste," and "Class C low-level radioactive waste" have the meanings assigned by commission rule.

(b) The compact waste disposal facility license holder shall dispose of Class B low-level radioactive waste and Class C low-level radioactive waste:

(1) within a reinforced concrete container and within a reinforced concrete barrier or within containment structures made of materials technologically equivalent or superior to reinforced concrete; and

(2) in such a manner that the waste can be monitored

and retrieved.

(c) The commission by rule may require a compact waste disposal facility license holder to dispose of certain Class A low-level radioactive wastes that present a hazard because of their high radiation levels in the manner required for Class B low-level radioactive waste and Class C low-level radioactive waste under Subsection (b). To the extent practicable, rules adopted under this subsection shall be consistent with federal rules regarding classification of low-level radioactive waste under 10 C.F.R. Part 61.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.219. TECHNIQUES FOR MANAGING LOW-LEVEL RADIOACTIVE WASTE. (a) As a condition for obtaining a compact waste disposal facility license, an applicant must submit to the commission or its designee evidence relating to the reasonableness of any technique for managing low-level radioactive waste to be practiced at the proposed disposal facility or facilities.

(b) Before determining the techniques to be used for managing low-level radioactive waste, an applicant shall study alternative techniques, including:

(1) waste processing and reduction at the site of waste generation and at the disposal facility; and

(2) the use of aboveground isolation facilities.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.220. DESIGN OF FACILITY. The design of a disposal facility should incorporate, to the extent practicable, safeguards against hazards resulting from local meteorological conditions, including phenomena such as hurricanes, tornados, earthquakes, earth tremors, violent storms, and susceptibility to flooding.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.221. MIXED WASTE. (a) In this section, "mixed waste" means a combination of hazardous waste as defined by Chapter 361 and low-level radioactive waste and includes federal mixed waste.

(b) The compact waste disposal facility license holder in accepting mixed waste at the compact waste disposal facility or a federal facility waste disposal facility shall comply with Chapter 361, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended, and this chapter.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.222. TERM OF LICENSE. The compact waste disposal facility license issued under this subchapter expires on the 15th anniversary of its date of issuance and may be renewed for one or more terms of 10 years.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.223. HEALTH SURVEILLANCE SURVEY. The commission, the department, and local public health officials shall develop a health surveillance survey for the population located in the vicinity of the disposal facility site.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.224. PACKAGING OF RADIOACTIVE WASTE. The department shall adopt rules relating to the packaging of radioactive waste.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.225. SHIPMENT OF LOW-LEVEL RADIOACTIVE WASTE.

(a) On arrival of a shipment of low-level radioactive waste at the compact waste disposal facility or a federal facility waste disposal facility, the compact waste disposal facility license holder must determine that the waste complies with all laws, rules, and standards relating to processing and packaging of low-level radioactive waste before the waste is accepted for disposal at the facility.

(b) A person making a shipment of low-level radioactive waste that is in excess of 75 cubic feet shall give the compact waste disposal facility license holder written notice of the shipment at least 72 hours before shipment to the compact waste disposal facility or a federal facility waste disposal facility

begins. The written notice must contain information required by the department.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.226. IMPROPERLY PROCESSED OR PACKAGED LOW-LEVEL RADIOACTIVE WASTE. (a) If low-level radioactive waste that is not properly processed or packaged arrives at the compact waste disposal facility or a federal facility waste disposal facility, the compact waste disposal facility license holder shall properly process and package the waste for disposal and charge the person making the shipment a fee to have the low-level radioactive waste properly processed and packaged.

(b) The compact waste disposal facility license holder shall report to the federal and state agencies that establish rules and standards for processing, packaging, and transporting low-level radioactive waste any person who delivers to the compact waste disposal facility or a federal facility waste disposal facility low-level radioactive waste that is not properly processed or packaged.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.227. SELECTION OF APPLICATION FOR COMPACT WASTE DISPOSAL FACILITY LICENSE. (a) In selecting an application for the compact waste disposal facility license, the commission shall:

(1) issue notice of the opportunity to submit an application to dispose of low-level radioactive waste in accordance with Section 401.228;

(2) review all applications received under Subdivision (1) for administrative completeness;

(3) evaluate all administratively complete applications in accordance with the evaluation criteria established by Sections 401.233-401.236 and shall select the application that has the highest comparative merit in accordance with Section 401.232; and

(4) review the selected application under Subdivision (3) for technical completeness and issue a draft license in accordance with Sections 401.237 and 401.238.

(b) If the selected application is rejected or denied by the commission, the commission may select the next highest comparative merit application and proceed in accordance with Subsection (a)(4). Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.228. NOTICE TO RECEIVE APPLICATIONS. Not later than January 1, 2004, the commission shall give to the secretary of state for publication in the Texas Register notice that:

(1) the commission will accept applications for a 30-day period, beginning 180 days after the date of the Texas Register notice, for the siting, construction, and operation of a facility or facilities for disposal of low-level radioactive waste;

(2) applications must comply with Chapter 401, Health and Safety Code, the rules of the commission, and any other applicable requirements in the commission's discretion;

(3) applications must include a nonrefundable \$500,000 application processing fee;

(4) applications received within the 30-day application receipt period will be evaluated by the commission for administrative completeness;

(5) applications deemed administratively complete will be evaluated by the commission in accordance with the statutory evaluation criteria under Sections 401.233-401.236; and

(6) based on the commission's evaluation, one application will be selected to be processed by the commission.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.229. APPLICATION PROCESSING FEE. An application for a compact waste disposal facility license must include payment to the commission of an application processing fee of \$500,000. The commission may not review an application for administrative completeness until the commission receives the application processing fee. The application processing fee is nonrefundable. If the commission's costs in processing an application under this subchapter exceed the \$500,000 application processing fee, the commission may assess and collect additional fees from the applicant to recover the costs. Recoverable costs include costs

incurred by the commission for administrative review, technical review, and hearings associated with the application.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.230. RECEIPT OF APPLICATIONS. (a) For a 30-day period beginning 180 days after the date notice is published under Section 401.228, the commission shall accept applications for a compact waste disposal facility license.

(b) Not later than the 45th day after the date an application is received, the commission shall issue an administrative notice of deficiency to each applicant whose application is timely submitted but is determined by the commission to be administratively incomplete.

(c) The commission shall provide an applicant for whom an administrative notice of deficiency is issued not more than three 30-day opportunities to cure the noted deficiencies in the application.

(d) The commission shall reject any application that, after the period for correcting deficiencies has expired, is not administratively complete.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.231. ADMINISTRATIVELY COMPLETE APPLICATION. The commission shall consider as administratively complete an application for which the commission has received the portions of the application necessary to allow the commission to review the technical merits of the application, including:

- (1) the identity and qualifications of the applicant;
- (2) a description of the proposed disposal facility or facilities and disposal facility site;
- (3) a description of the character of the proposed activities and the types and quantities of waste to be managed at the disposal facility or facilities;
- (4) a description of the proposed schedules for construction, receipt of waste, and closure;
- (5) a description of the financial assurance mechanism to be used;

(6) a description of the design features of the facility or facilities, along with a description of the methods of construction and operation of the facility or facilities;

(7) a characterization of the area and disposal facility site characteristics, including ecology, geology, soils, hydrology, natural radiation background, climatology, meteorology, demography, and current land uses;

(8) a description of the safety programs to be used at the proposed facility or facilities;

(9) a copy of the warranty deed or other conveyance showing required right, title, and interest in the land and buildings on which the facility or facilities are proposed to be located is owned in fee by the applicant as required by Section 401.204;

(10) an application processing fee in the amount prescribed by Section 401.229 and proof of additional funds sufficient to cover any further costs of processing the application as estimated by the commission; and

(11) a copy of a resolution of support of the proposed facility or facilities from the commissioners court of the county in which the facility or facilities are proposed to be located.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.232. EVALUATION OF APPLICATIONS; COMMISSION SELECTION. (a) The commission shall have prepared by commission personnel or an independent contractor a written evaluation of each administratively complete application in terms of the criteria established under Sections 401.233-401.236.

(b) The commission shall conduct at least one public meeting in the county or counties where a compact waste disposal facility or federal facility waste disposal facility is to be located to receive public comments on the administratively complete applications. The commission shall set the time and place of the meetings as soon as practicable after the close of the period for administrative review of the applications.

(c) The commission may issue a request for further information to each applicant whose application is determined by

the commission to be insufficient for the purposes of the commission's evaluation.

(d) The commission shall provide an applicant for whom a request for further information is issued two 30-day opportunities to adequately respond in the discretion of the commission.

(e) The commission shall use the written evaluations and application materials to evaluate each application according to the statutory criteria established by Sections 401.233-401.236. The commission shall evaluate each application for each statutory criterion for purposes of comparing the relative merit of the applications, giving:

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

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

(f) Before publication of the notice of the commission's intention to accept applications under Section 401.228, the commission by rule may adopt criteria in addition to the criteria under Sections 401.233-401.236 by which the commission may evaluate applications. The criteria must be consistent with those sections.

(g) Not later than the 270th day after it receives the last timely filed application, the commission, based on the written evaluations and application materials, shall select the application that has the highest comparative merit.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.233. TIER 1 CRITERIA. (a) The commission shall consider as tier 1 criteria:

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

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

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

(b) Natural characteristics of the disposal facility site include:

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

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

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

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

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

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

(5) the ease of access to the site.

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

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

(2) acceptable operational safety; and

(3) acceptable long-term safety as demonstrated by

analysis or study.

(d) Financial assurance criteria include:

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

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

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

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

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

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

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

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

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.234. TIER 2 CRITERIA. The commission shall consider as tier 2 criteria:

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

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

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.235. TIER 3 CRITERIA. The commission shall consider as tier 3 criteria the applicant's:

- (1) technical qualifications to receive, store, process, and dispose of low-level radioactive waste;
- (2) experience in management and disposal of low-level radioactive waste and other radioactive materials;
- (3) previous operating practices in this state and elsewhere, including the practices of a parent, subsidiary, or affiliated entity of the applicant, related to radioactive materials;
- (4) record of compliance with environmental statutes, rules, and licenses in this state and in any other jurisdiction, including the records of a parent or subsidiary of the applicant, subject to Section 401.243;
- (5) training programs proposed for its employees whose duties relate to the proposed disposal facility site and activities;
- (6) monitoring, recordkeeping, and reporting plans;
- (7) low-level radioactive waste spill detection and cleanup plans for the proposed disposal facility site and activities;
- (8) decommissioning and postclosure plans;
- (9) security plans;
- (10) monitoring and protection plans for workers;
- (11) emergency plans;
- (12) plans for background monitoring during the license period, including analysis of the ambient conditions of the disposal facility site and analysis of established trends of the disposal facility site's natural parameters, including:
 - (A) natural background radioactivity levels;
 - (B) radon gas levels;
 - (C) air particulate levels;
 - (D) soil characteristics, including chemical characteristics;
 - (E) surface water and groundwater characteristics; and
 - (F) flora and fauna at the site; and
- (13) ability to adequately manage the proposed disposal facility or facilities and activities for the term of the

license.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.236. TIER 4 CRITERIA. The commission shall consider as tier 4 criteria:

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

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

(A) the proposed disposal facility or facilities;

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

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

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.237. TECHNICAL REVIEW. (a) Immediately on the commission's selection of the application that has the highest comparative merit in accordance with Section 401.232, the commission shall begin a technical review of the selected application.

(b) The commission shall complete the technical review and prepare a draft license not later than the 15th month after the month in which the technical review begins.

(c) The commission shall give priority to the review of the selected application over all other radioactive materials and waste licensing and registration matters pending before the commission, except those the executive director of the commission determines necessary to avert or address a health and safety emergency.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.238. NOTICE OF DRAFT LICENSE AND OPPORTUNITY FOR HEARING. On completion of the technical review of the selected application and preparation of the draft license, the commission

shall publish, at the applicant's expense, notice of the draft license and specify the requirements for requesting a contested case hearing by a person affected. The notice shall include a statement that the draft license is available for review on the commission's website and that the draft license and the application materials are available for review at the offices of the commission and in the county or counties in which the proposed disposal facility site is located. Notice shall be published in the Texas Register and in a newspaper of general circulation in each county in which the proposed disposal facility site is located. The applicant shall mail the notice by certified mail to each person who owns land adjacent to the proposed disposal facility site.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.239. CONTESTED CASE; FINAL ACTION ON APPLICATION. (a) An administrative law judge of the State Office of Administrative Hearings shall conduct a contested case hearing on the application and draft license if the applicant or a person affected requests a hearing.

(b) The administrative law judge may not admit as a party to the contested case hearing a person other than the applicant, the executive director of the commission, or a person affected.

(c) The administrative law judge shall issue a proposal for decision not later than the first anniversary of the publication date of the notice of draft license published under Section 401.238.

(d) The commission shall take final action on the proposal for decision of the administrative law judge not later than the 90th day after the date the proposal is issued.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.240. JUDICIAL REVIEW. (a) Notwithstanding any other law, a person affected by an action of the commission under this subchapter may file a petition for judicial review of the action only after the commission takes final action on a license application under Section 401.239(d). A petition must be filed not later than the 30th day after the date of the final action.

(b) In its review of an action under this subchapter, a court may not substitute its judgment for the judgment of the commission on the weight of the evidence the commission considered, but:

(1) may affirm the action in whole or in part; and

(2) shall reverse or remand the case for further proceedings if substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions:

(A) are in violation of a constitutional or statutory provision;

(B) are in excess of the commission's statutory authority;

(C) are made through unlawful procedure;

(D) are affected by other error of law;

(E) are not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or

(F) are arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.241. SECURITY. (a) In determining the amount of security required of a compact waste disposal facility license holder under Section 401.109, the commission shall also consider the need for financial security to address and prevent unplanned events that pose a risk to public health and safety and that may occur after the decommissioning and closure of the compact waste disposal facility or a federal facility waste disposal facility licensed under Section 401.216.

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

amount of the security required under this section based on:

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

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

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

(c) The payment schedule required under this section must be sufficient to ensure that the amount of security provided by the license holder at any time between the issuance of the license and the time at which the facility is decommissioned is sufficient to:

(1) address any increase in the risk to public health and safety that accompanies an increase in the volume of waste accepted by the license holder; and

(2) meet the requirements of the commission for addressing unplanned events that may occur after the site has been closed.

(d) The commission may require a license holder under this subchapter to provide security in the forms listed under Section 401.109(d).

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.242. ACCEPTANCE OF WASTE. (a) The commission shall require the compact waste disposal facility license holder to follow, as closely as is possible, the schedule submitted to the commission under Section 401.231. If the compact waste disposal facility license holder holds a permit to process, store, or dispose of hazardous waste under Chapter 361, the license holder may accept hazardous waste according to the schedule under Section 401.231 before the compact waste disposal facility begins operation.

(b) If the commission finds that the compact waste disposal facility license holder has violated this chapter or any commission rule in a manner that may endanger public health or safety, the commission may prohibit the license holder from accepting low-level radioactive waste at either the compact waste disposal facility or the federal facility waste disposal facility until the commission

finds that the license holder is in compliance with the statute or rule found to be violated.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.243. COMPLIANCE HISTORY. After an opportunity for a hearing, the commission shall deny an application for a license under this subchapter or an amendment or renewal for a license under this subchapter if the applicant's compliance history reveals a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process through a history of violations of this chapter or the commission's rules under this chapter.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.244. HOST COUNTY PUBLIC PROJECTS. (a) The compact waste disposal facility license holder each quarter shall transfer to the commissioners court of the host county five percent of the gross receipts from:

(1) compact waste received at the compact waste disposal facility; and

(2) any federal facility waste received at a federal facility waste disposal facility licensed under Section 401.216.

(b) The commissioners court of the host county may:

(1) spend the money for public projects in the host county; or

(2) disburse the money to other local entities or to public nonprofit corporations to be spent for local public projects.

(c) Money received from the compact waste disposal facility license holder under this section may be spent only for public projects in the host county that are for the use and benefit of the public at large.

(d) Money received by the commissioners court of the host county under this section is not a loan or grant-in-aid subject to review by a regional planning commission under Chapter 391, Local Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1993, 73rd Leg., ch. 878, Sec. 16, eff. June 18, 1993; Acts 1999, 76th Leg., ch. 1367, Sec. 32, eff. Sept. 1, 1999. Renumbered from Health and Safety Code Sec. 402.252 and amended by Acts 2003, 78th Leg., ch. 1067, Sec. 8, eff. Sept. 1, 2003.

Sec. 401.2445. STATE FEE. The compact waste disposal facility license holder each quarter shall transfer to the state general revenue fund five percent of the gross receipts from:

(1) compact waste received at the compact waste disposal facility; and

(2) any federal facility waste received at a federal facility waste disposal facility licensed under Section 401.216.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 9, eff. Sept. 1, 2003.

Sec. 401.245. COMPACT WASTE DISPOSAL FEES. (a) A compact waste disposal facility license holder who receives low-level radioactive waste for disposal pursuant to the Texas Low-Level Radioactive Waste Disposal Compact established under Chapter 403 shall have collected a waste disposal fee to be paid by each person who delivers low-level radioactive waste to the compact waste disposal facility for disposal.

(b) The commission by rule shall adopt and periodically revise compact waste disposal fees according to a schedule that is based on the projected annual volume of low-level radioactive waste received, the relative hazard presented by each type of low-level radioactive waste that is generated by the users of radioactive materials, and the costs identified in Section 401.246.

(c) In determining relative hazard, the commission shall consider the radioactive, physical, and chemical properties of each type of low-level radioactive waste.

(d) Rules adopted under this section may include provisions establishing:

(1) classification of customers and services; and

(2) applicability of fees.

(e) Fees adopted under this section must be consistent with the criteria listed under Section 401.246.

(f) A rule or order adopted by the commission under this

section may not conflict with a ruling of a federal regulatory body. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 5.01, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 878, Sec. 17, eff. June 18, 1993; Acts 1999, 76th Leg., ch. 1367, Sec. 33, eff. Sept. 1, 1999. Renumbered from Health and Safety Code Sec. 402.272 and amended by Acts 2003, 78th Leg., ch. 1067, Sec. 11, eff. Sept. 1, 2003.

Sec. 401.246. WASTE DISPOSAL FEE CRITERIA. (a) Compact waste disposal fees adopted by the commission must be sufficient to:

(1) allow the compact waste facility license holder to recover costs of operating and maintaining the compact waste disposal facility and a reasonable profit on the operation of that facility;

(2) provide an amount necessary to meet future costs of decommissioning, closing, and postclosure maintenance and surveillance of the compact waste disposal facility and the compact waste disposal facility portion of the disposal facility site;

(3) provide an amount to fund local public projects under Section 401.244;

(4) provide a reasonable rate of return on capital investment in the facilities used for management or disposal of compact waste at the compact waste disposal facility; and

(5) provide an amount necessary to pay compact waste disposal facility licensing fees, to pay compact waste disposal facility fees set by rule or statute, and to provide security for the compact waste disposal facility as required by the commission under law and commission rules.

(b) To the extent practicable, the commission shall use the methods used by the Public Utility Commission of Texas under Sections 36.051, 36.052, and 36.053, Utilities Code, when establishing overall revenues, reasonable return, and invested capital for the purpose of setting fees under Subsection (a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 804, Sec. 6, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 449, Sec. 34, eff. Sept. 1, 1993; Acts 1993,

73rd Leg., ch. 878, Sec. 19, eff. June 18, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 17.01(30), eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 402.273 and amended by Acts 2003, 78th Leg., ch. 1067, Sec. 11, eff. Sept. 1, 2003.

Sec. 401.247. REASONABLE AND NECESSARY EXPENSES. Fees paid under this subchapter are reasonable and necessary expenses for ratemaking purposes.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 17.03, eff. Sept. 1, 1991. Renumbered from Health and Safety Code Sec. 402.276 and amended by Acts 2003, 78th Leg., ch. 1067, Sec. 11, eff. Sept. 1, 2003.

Sec. 401.248. LIMITATIONS ON LOW-LEVEL RADIOACTIVE WASTE DISPOSAL. (a) The commission by rule shall exclude from a disposal facility certain types of low-level radioactive waste that are incompatible with disposal operations.

(b) The state may enter into compacts with another state or several states for the disposal in this state of low-level radioactive waste only if the compact:

(1) limits the total volume of all low-level radioactive waste to be disposed of in this state from the other state or states to 20 percent of the annual average of low-level radioactive waste that the governor projects will be produced in this state from the years 1995 through 2045;

(2) gives this state full administrative control over management and operation of the compact waste disposal facility;

(3) requires the other state or states to join this state in any legal action necessary to prevent states that are not members of the compact from disposing of low-level radioactive waste at the compact waste disposal facility;

(4) allows this state to charge a fee for the disposal of low-level radioactive waste at the compact waste disposal facility;

(5) requires the other state or states to join in any legal action involving liability from the compact waste disposal facility;

(6) requires the other state or states to share the full cost of constructing the compact waste disposal facility;

(7) allows this state to regulate, in accordance with federal law, the means and routes of transportation of the low-level radioactive waste in this state;

(8) requires the other state or states to pay for community assistance projects selected by the host county in an amount not less than \$1 million or 10 percent of the amount contributed by the other state or states;

(9) is agreed to by the Texas Legislature, the legislature of the other state or states, and the United States Congress; and

(10) complies with all applicable federal law.

(c) This section does not affect the ability of this state to transfer low-level radioactive waste to another state.

(d) If this state enters into a compact with another state and the terms of the compact conflict with this section, the terms of the compact control.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 583, Sec. 5, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.0511, eff. Aug. 12, 1991; Acts 1993, 73rd Leg., ch. 878, Sec. 13, eff. June 18, 1993; Acts 1999, 76th Leg., ch. 1367, Sec. 29, eff. Sept. 1, 1999. Renumbered from Health and Safety Code Sec. 402.219 and amended by Acts 2003, 78th Leg., ch. 1067, Sec. 10, eff. Sept. 1, 2003.

Sec. 401.249. LOW-LEVEL RADIOACTIVE WASTE FUND. (a) The low-level radioactive waste fund is in the state treasury.

(b) The low-level radioactive waste fund is an interest-bearing fund. Interest earned on money in the fund shall be deposited to the credit of the fund.

(c) Except as otherwise provided by this chapter, money collected by the commission, including fees collected under Section 401.229, any additional fees collected to recover costs of processing a license application, annual fees, and any other fees necessary to administer this subchapter shall be deposited to the credit of the low-level radioactive waste fund.

(d) Section 403.095, Government Code, does not apply to the low-level radioactive waste fund.

(e) The commission may transfer money from the low-level radioactive waste fund to the perpetual care account to make payments required by the commission under Section 401.303.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 148, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 804, Sec. 7, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 878, Sec. 20, eff. June 18, 1993; Acts 1999, 76th Leg., ch. 1367, Sec. 35, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 580, Sec. 11, eff. Sept. 1, 2003. Renumbered from Health and Safety Code Sec. 402.275 and amended by Acts 2003, 78th Leg., ch. 1067, Sec. 12, eff. Sept. 1, 2003.

Sec. 401.250. PAYMENTS BY PARTY STATES.

(a) Notwithstanding any other provision of law, Act of the legislature or the executive branch, or any other agreement, the initial payment of \$12.5 million due from each nonhost party state under Section 5.01 of the compact established under Section 403.006 is due not later than November 1, 2003.

(b) This section prevails over any other law or agreement in conflict or inconsistent with this section.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 13, eff. Sept. 1, 2003.

SUBCHAPTER G. SPECIAL PROVISIONS CONCERNING BY-PRODUCT MATERIAL

Sec. 401.261. SUBCHAPTER APPLICATION. In this subchapter:

(1) "By-product material" does not include that by-product material defined by Section 401.003(3)(A).

(2) "Processing" means the possession, use, storage, extraction of material, transfer, volume reduction, compaction, or other separation incidental to recovery of source material.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.232, eff. Sept. 1, 1995.

Sec. 401.262. MANAGEMENT OF CERTAIN BY-PRODUCT

MATERIAL. The commission 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.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1338, Sec. 4, eff. June 20, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332, Sec. 13, eff. June 15, 2007.

Sec. 401.2625. LICENSING AUTHORITY. The commission 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 143, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1338, Sec. 5, eff. June 20, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332, Sec. 14, eff. June 15, 2007.

Sec. 401.263. APPLICATION; ENVIRONMENTAL ANALYSIS.

(a) If the commission 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 determines that the licensed activity will have a significant impact on the human environment, the commission 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 shall give notice of the analysis as provided by commission 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 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 proceedings.

(f) The commission by rule 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.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1338, Sec. 6, eff. June 20, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332, Sec. 15, eff. June 15, 2007.

Sec. 401.264. NOTICE AND HEARING. (a) The commission on its own motion may or on the written request of a person affected shall provide an opportunity for a public hearing on an application over which the commission has jurisdiction to determine whether to issue, renew, or amend a license to process materials that produce by-product materials or a license to dispose of by-product materials in the manner provided by Chapter 2001, Government Code, 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 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 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 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.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1338, Sec. 7, eff. June 20, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332, Sec. 16, eff. June 15, 2007.

Sec. 401.265. CONDITIONS OF CERTAIN BY-PRODUCT MATERIAL LICENSES. The commission shall prescribe conditions in a radioactive substances license issued, 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 commission and that are compatible with 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.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1338, Sec. 8, eff. June 20, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332, Sec. 17, eff. June 15, 2007.

Sec. 401.266. TRANSFER OF LAND REQUIRED. (a) The commission by rule or 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.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1338, Sec. 9, eff. June 20, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332, Sec. 18, eff. June 15, 2007.

Sec. 401.267. ACQUISITION AND SALE OF CERTAIN BY-PRODUCT MATERIALS AND SITES. (a) The commission 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.

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1338, Sec. 10, eff. June 20, 1997; Acts 1999, 76th Leg., ch. 244, Sec. 1, eff. Aug. 30, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332, Sec. 19, eff. June 15, 2007.

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 acts performed before the transfer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993.

Sec. 401.269. MONITORING, MAINTENANCE, AND EMERGENCY MEASURES. (a) The commission 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 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.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1338, Sec. 11, eff. June 20, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332, Sec. 20, eff. June 15, 2007.

Sec. 401.270. CORRECTIVE ACTION AND MEASURES. (a) If the commission finds that by-product material or the operation by which that by-product material is derived threatens the public health and safety or the environment, the commission 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 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 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 perpetual care account the amount necessary to pay the costs.

(f) If an order issued by the commission under 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.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1072, Sec. 47, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1338, Sec. 12, eff. June 20, 1997; Acts 2003, 78th Leg., ch. 580, Sec. 5, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 14, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332, Sec. 21, eff. June 15, 2007.

Sec. 401.271. STATE FEE ON RADIOACTIVE SUBSTANCES. (a) A holder of a license issued by the 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) five percent shall be remitted to the comptroller for deposit to the credit of the general revenue fund; and

(2) five 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 or federal facility waste as defined by Section 401.2005 or industrial solid waste as defined by Section 361.003.

Added by Acts 2007, 80th Leg., R.S., Ch. 1332, Sec. 22, eff. June 15, 2007.

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

Added by Acts 2007, 80th Leg., R.S., Ch. 1332, Sec. 22, eff. June 15, 2007.

SUBCHAPTER H. FINANCIAL PROVISIONS

Sec. 401.301. LICENSE AND REGISTRATION FEES. (a) The commission and department may collect a fee for each license and registration the agency issues.

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

(1) process applications for licenses or registrations;

(2) amend or renew licenses or registrations;

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

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

Text of subsection as amended by Acts 2007, 80th Leg., R.S., Ch.

1061, Sec. 3

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

Text of subsection as amended by Acts 2007, 80th Leg., R.S., Ch.
1332, Sec. 23

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

(d) The department may require that each person who holds a specific license issued by the department pay to the department an additional five percent of the appropriate fee set under Subsection (b). Fees collected under this subsection shall be deposited to the credit of the perpetual care account. The fees are not refundable.

(d) The commission and department may require that each person who holds a specific license issued by the agency annually pay to the agency an additional five percent of the appropriate annual fee set under Subsection (b). Fees collected under this subsection shall be deposited to the credit of the perpetual care account. The fees are not refundable.

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

Text of subsection as added by Acts 2007, 80th Leg., R.S., Ch. 1061,
Sec. 3

(f) Notwithstanding any other provision of this section, the department may not assess a fee on a local law enforcement agency for the licensing and registration of an X-ray machine that is used to screen packages or other objects the agency suspects may contain an explosive or other item that would pose a danger to the public health and safety. Except as otherwise provided by this subsection, a local law enforcement agency is subject to the licensing and registration requirements of this chapter.

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 17.04, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.233, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 201, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1367, Sec. 22, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1009, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 580, Sec. 6, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 15, 16, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1061, Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1332, Sec. 23, eff. June 15, 2007.

Sec. 401.302. NUCLEAR REACTOR AND FIXED NUCLEAR FACILITY FEE. (a) The department, in coordination with the commission, may set and collect an annual fee from the operator of each nuclear reactor or other fixed nuclear facility in the state that uses special nuclear material.

(b) The amount of fees collected may not exceed the actual expenses that arise from emergency planning and implementation and environmental surveillance activities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332, Sec. 24, eff. June 15,

2007.

Sec. 401.303. PAYMENT FOR MAINTENANCE, SURVEILLANCE, OR OTHER CARE. (a) The department or commission may require the holder of a license issued by the agency to pay annually to the issuing agency an amount determined by the issuing agency if continuing or perpetual maintenance, surveillance, or other care is required after termination of a licensed activity.

(b) The issuing agency annually shall review the license holder's payments under this section to determine if the payment schedule is adequate for the maintenance and surveillance that the licensed activity requires or may require in the future.

(c) The issuing agency may review estimates of costs that are required to be incurred under this chapter in accordance with the need, nature, and cost of decontamination, stabilization, decommissioning, reclamation, and disposal activity and the maintenance and surveillance required for public health and safety and the environment.

(d) The issuing agency shall set the charges for maintenance and perpetual care at amounts consistent with existing technology.

(e) The issuing agency may not impose charges that exceed the amount that the issuing agency projects to be required for maintenance, surveillance, and other necessary care required after the licensed activity is terminated.

(f) An increase in costs may not be applied retroactively but may apply to increases in subsequent annual payments.

(g) If a license holder satisfies the obligations under this chapter, the issuing agency shall have the comptroller promptly refund to the license holder from the perpetual care account the excess of the amount of all payments made by the license holder to the issuing agency and the investment earnings of those payments over the amount determined to be required for the continuing maintenance and surveillance of land, buildings, and radioactive material conveyed to the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.234, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 580, Sec. 7, eff. Sept. 1, 2003; Acts

2003, 78th Leg., ch. 1067, Sec. 17, eff. Sept. 1, 2003.

Sec. 401.304. ACCEPTANCE AND ADMINISTRATION OF FUNDS. The department and commission each may accept and administer conditional or other loans, grants, gifts, or other funds from the federal government or other sources to carry out their respective functions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.234, eff. Sept. 1, 1995.

Sec. 401.305. RADIATION AND PERPETUAL CARE ACCOUNT.

(a) The radiation and perpetual care account is an account in the general revenue fund.

(b) The department and commission each shall deposit to the credit of the perpetual care account money and security they receive under this chapter, including an administrative penalty collected by the department under Sections 401.384-401.390 but excluding fees collected under Sections 401.301(a)-(c) and 401.302. Interest earned on money in the perpetual care account shall be credited to the perpetual care account.

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

(d) Money and security in the perpetual care account may not be used for normal operating expenses of the department or commission.

(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, 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 arising from a license holder's abandonment of radioactive substances, default on a lawful obligation, insolvency, or inability to meet the requirements of this chapter or of department or commission rules. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 146, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.235, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1009, Sec. 4, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 580, Sec. 8, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 18, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332, Sec. 25, eff. June 15, 2007.

SUBCHAPTER I. COURT PROCEEDINGS

Sec. 401.341. JUDICIAL REVIEW. A person who is affected by a final decision of the department and who has exhausted all administrative remedies available in the appropriate agency is entitled to judicial review under Chapter 2001, Government Code. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.236, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 48, eff. Sept. 1,

1997.

Sec. 401.342. SUIT BY ATTORNEY GENERAL. (a) The attorney general, at the request of the department regarding an activity under its jurisdiction, shall institute an action in a district court in Travis County or in any county in which a violation occurs or is about to occur if in the department's judgment a person has engaged in or is about to engage in an act or practice that violates or will violate this chapter or a rule, license, registration, or order adopted or issued by the department under this chapter. The attorney general may determine the court in which suit will be instituted.

(b) The attorney general may petition the court for:

(1) an order enjoining the act or practice or an order directing compliance and reimbursement of the perpetual care account, if applicable;

(2) civil penalties as provided by Section 401.381;
or

(3) a permanent or temporary injunction, restraining order, or other appropriate order if the department shows that the person engaged in or is about to engage in any of the acts or practices.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.236, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 49, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 580, Sec. 9, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 19, eff. Sept. 1, 2003.

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 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 resulting from a violation of this chapter relating to an activity under the 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.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.236, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 50, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 580, Sec. 10, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 20, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332, Sec. 26, eff. June 15, 2007.

SUBCHAPTER J. ENFORCEMENT

Sec. 401.381. GENERAL CIVIL PENALTIES. (a) A person who causes, suffers, allows, or permits a violation of this chapter, a department rule or order, or a license or registration condition is subject to a civil penalty of not less than \$100 or more than \$25,000 for each violation and for each day that a continuing violation occurs.

(b) The attorney general may file suit to recover a civil penalty under this section in a district court in Travis County or in the county in which the violation occurred. If the attorney general seeks to recover civil penalties for violations that have occurred in more than one county, the attorney general may join all of the violations in one suit and may file the suit either in a district court in Travis County or in a district court in a county in which at least one of the violations occurred.

(c) The civil penalty provided by this section is cumulative of any other remedy provided by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.237, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 51, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1009, Sec. 5, eff. Sept. 1, 2001.

Sec. 401.382. GENERAL CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally or knowingly

violates a provision of this chapter other than the offense described by Section 401.383.

(b) An offense under this section is a Class B misdemeanor, unless it is shown on the trial of the person that the person has been previously convicted of an offense under this section, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 401.383. CRIMINAL PENALTY FOR CERTAIN ACTS RELATED TO LOW-LEVEL RADIOACTIVE WASTE. (a) A person commits an offense if the person intentionally or knowingly receives, processes, concentrates, stores, transports, or disposes of low-level radioactive waste without a license issued under this chapter.

(b) An offense under this section is a Class A misdemeanor, unless it is shown at the trial of the person that the person has been previously convicted of an offense under this section, in which event the offense is punishable by a fine of not less than \$2,000 or more than \$100,000, confinement in the county jail for not more than one year, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1367, Sec. 37, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 10.003, eff. Sept. 1, 2001.

Sec. 401.384. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty as provided by this section and Sections 401.385-401.390 against a person who causes, suffers, allows, or permits a violation of a provision of this chapter relating to an activity under the department's jurisdiction, a rule or order adopted by the department under this chapter, or a condition of a license or registration issued by the department under this chapter.

(b) The penalty for each violation may not exceed \$10,000 a day for a person who violates this chapter or a rule, order, license, or registration issued under this chapter. Each day a violation continues may be considered a separate violation.

(c) In determining the amount of the penalty, the department shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited acts and the hazard or potential hazard created to the public health or safety;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation; and

(5) any other matters that justice requires.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.238, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 52, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1009, Sec. 6, eff. Sept. 1, 2001.

Sec. 401.385. PRELIMINARY REPORT OF VIOLATION. If the department, after an investigation, concludes that a violation relating to an activity under its jurisdiction has occurred, the department may issue a preliminary report:

(1) stating the facts that support the conclusion;

(2) recommending that an administrative penalty under Section 401.384 be imposed; and

(3) recommending the amount of the penalty, which shall be based on the seriousness of the violation as determined from the facts surrounding the violation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.239, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 53, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1009, Sec. 7, eff. Sept. 1, 2001.

Sec. 401.386. NOTICE OF PRELIMINARY REPORT. (a) The department shall give written notice of its preliminary report to the person charged with the violation not later than the 10th day after the date on which the report is issued.

(b) The notice must include:

(1) a brief summary of the charges;

(2) a statement of the recommended penalty amount; and

(3) a statement of the right of the person charged to a

hearing on the occurrence of the violation, the amount of the penalty, or both.

(c) Not later than the 20th day after the date on which the notice is sent, the person charged may consent in writing to the report, including the recommended penalty, or make a written request for a hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.240, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 54, eff. Sept. 1, 1997.

Sec. 401.387. CONSENT TO PENALTY. (a) If the person charged with the violation consents to the penalty recommended by the department or does not respond to the notice on time, the commissioner or the commissioner's designee, by order shall assess that penalty or order a hearing to be held on the findings and recommendations in the report.

(b) If the commissioner or the commissioner's designee assesses the recommended penalty, the department shall give written notice to the person charged of the decision and that person must pay the penalty.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.241, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 55, eff. Sept. 1, 1997.

Sec. 401.388. HEARING AND DECISION. (a) If the person charged requests a hearing, the commissioner shall order a hearing and shall give notice of that hearing.

(b) The hearing shall be held by a hearing examiner designated by the commissioner.

(c) The hearing examiner shall make findings of fact and promptly issue to the commissioner a written decision as to the occurrence of the violation and a recommendation of the amount of the proposed penalty if a penalty is warranted.

(d) Based on the findings of fact and the recommendations of the hearing examiner, the commissioner by order may find that a violation has occurred and assess an administrative penalty or may find that no violation occurred.

(e) All proceedings under Subsections (a)-(d) are subject to Chapter 2001, Government Code.

(f) The commissioner shall give notice to the person charged of the commissioner's decision, and if the commissioner finds that a violation has occurred and an administrative penalty has been assessed, the commissioner shall give to the person charged written notice of:

(1) the commissioner's findings;

(2) the amount of the penalty; and

(3) the person's right to judicial review of the commissioner's order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.241, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 56, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1009, Sec. 8, eff. Sept. 1, 2001.

Sec. 401.389. DISPOSITION OF PENALTY; JUDICIAL REVIEW.

(a) Not later than the 30th day after the date on which the commissioner's order is final, the person charged with the penalty shall pay the full amount of the penalty or file a petition for judicial review.

(b) If the person seeks judicial review of the violation, the amount of the penalty, or both, the person, within the time provided by Subsection (a), shall:

(1) send the amount of the penalty to the commissioner for placement in an escrow account; or

(2) post with the commissioner a supersedeas bond in a form approved by the commissioner for the amount of the penalty, the bond to be effective until judicial review of the order or decision is final.

(c) The commissioner may request enforcement by the attorney general if the person charged fails to comply with this section.

(d) Judicial review of the order or decision of the commissioner assessing the penalty shall be under Subchapter G, Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(53), 11.241, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 57, eff. Sept. 1, 1997.

Sec. 401.390. REMITTING PENALTY PAYMENTS; RELEASING BONDS. (a) If a penalty is reduced or not assessed, the commissioner shall:

(1) remit to the person charged the appropriate amount of any penalty payment plus accrued interest; or

(2) execute a release of the bond if a supersedeas bond has been posted.

(b) Accrued interest on amounts remitted by the commissioner shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid to the commissioner under Section 401.389(a) and ending on the date the penalty is remitted.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.241, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 58, eff. Sept. 1, 1997.

Sec. 401.393. COMMISSION ENFORCEMENT. The commission may enforce the provisions of this chapter under the commission's jurisdiction as provided by Chapter 7, Water Code.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 59, eff. Sept. 1, 1997.

SUBCHAPTER K. LICENSING AUTHORITY OF TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AND THE RAILROAD COMMISSION OF TEXAS

Sec. 401.412. COMMISSION LICENSING AUTHORITY.

(a) Notwithstanding any other provision of this chapter and subject to Sections 401.102 and 401.415, the commission has sole and exclusive authority to directly regulate and to grant, deny, renew, revoke, suspend, amend, or withdraw licenses for the disposal of radioactive substances.

(b) Notwithstanding any other provision of this chapter,

the 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 or disposal of by-product material under Subchapter G.

(c) The commission may adopt any rules and guidelines reasonably necessary to exercise its authority under this section. In adopting rules and guidelines, the commission shall consider the compatibility of those rules and guidelines with federal regulatory programs and the rules and guidelines of the board.

(d) The 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 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 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 waste management account and reappropriated for use by the commission for expenses incurred by the commission in administering the provisions of this chapter.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.050, eff. Aug. 12, 1991. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.243, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 75, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1338, Sec. 13, eff. June 20, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332, Sec. 28, eff. June 15, 2007.

Sec. 401.413. COMMISSION DISPOSAL LICENSE REQUIRED. A person required by another section of this chapter to obtain a license for the disposal of a radioactive substance is required to obtain the license from the commission and not from the department.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.050, eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.243, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1338, Sec. 14, eff. June 20, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332, Sec. 29, eff. June 15, 2007.

Sec. 401.414. MEMORANDA OF UNDERSTANDING. The Texas Commission on Environmental Quality, the Health and Human Services Commission, and the Railroad Commission of Texas by rule shall adopt memoranda of understanding defining their respective duties under this chapter.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.050, eff. Aug. 12, 1991.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332, Sec. 30, eff. June 15, 2007.

Sec. 401.415. OIL AND GAS NORM WASTE. (a) Notwithstanding any other provision of this chapter, the Railroad Commission of Texas:

(1) has sole authority to regulate and issue licenses, permits, and orders for the disposal of oil and gas NORM waste; and

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

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

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

(b) The Railroad Commission of Texas may adopt any rules reasonably necessary to exercise its authority under this section.

(c) The Railroad Commission of Texas may enforce this section or any rule, order, license, or permit adopted or issued under this section in the manner and subject to the conditions provided in Title 3 of the Natural Resources Code, including the

authority to seek and obtain civil penalties and injunctive relief as provided in that title.

(d) The Railroad Commission of Texas shall consult with the department and the Texas Natural Resource Conservation Commission as appropriate regarding administration of this section.

(e) To ensure that the State of Texas retains its Agreement Status with the U.S. Nuclear Regulatory Commission, and to ensure that radioactive materials are managed consistently to protect the public health and safety and the environment, the Railroad Commission of Texas shall issue rules on the management of oil and gas NORM waste and in so doing shall consult with the Texas Natural Resource Conservation Commission and the Department of Health regarding protection of the public health and the environment. The rules of the railroad commission shall provide protection for public health, safety, and the environment equivalent to the protection provided by rules applicable to disposal of other NORM wastes having similar properties, quantities, and distribution, although the approved methods and sites for disposing of oil and gas NORM wastes may be different from those approved for other NORM wastes.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.050, eff. Aug. 12, 1991. Amended by Acts 1993, 73rd Leg., ch. 810, Sec. 2, 3, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 17.01(29), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 276, Sec. 1, eff. May 22, 2001.

SUBCHAPTER L. CERTIFICATION OF MAMMOGRAPHY SYSTEMS

Sec. 401.421. DEFINITIONS. In this subchapter:

(1) "Certification" means an authorization for the use of a mammography system.

(2) "Mammography" means the use of radiation to produce an image of the breast on film, paper, or digital display that may be used to detect the presence of pathological conditions of the breast.

(3) "Mammography system" includes the following:

(A) an x-ray unit used as a source of radiation in producing images of breast tissue;

(B) an imaging system used for the formation of a latent image of breast tissue;

(C) an imaging processing device for changing a latent image of breast tissue to a visual image that can be used for diagnostic purposes;

(D) a viewing device used for the visual evaluation of an image of breast tissue if the image is produced in interpreting visual data captured on an image receptor;

(E) a medical radiological technologist who performs a mammography; and

(F) a physician who engages in, and who meets the requirements adopted by board rule relating to, the reading, evaluation, and interpretation of mammograms.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993.

Sec. 401.422. CERTIFICATION REQUIRED. (a) A person may not perform mammography unless the mammography system used has been issued a certification under this subchapter.

(b) A certification under Subsection (a) is required in addition to any license, registration, or other requirement under this chapter.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. July 1, 1994.

Sec. 401.423. POWERS AND DUTIES OF BOARD. (a) The board shall:

(1) prescribe application forms for original and renewal certifications;

(2) adopt rules for the administration of this subchapter; and

(3) take other action necessary to enforce this subchapter.

(b) The department shall apply under the Mammography Quality Standards Act of 1992 (42 U.S.C. Section 263b) to become an accreditation body and carry out the certification program requirements and to implement the standards established by the United States Secretary of Health under that Act in this state. If the United States Secretary of Health grants the department's

application, the department shall assume those responsibilities.
Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993.
Amended by Acts 1997, 75th Leg., ch. 759, Sec. 1, eff. Sept. 1,
1997.

Sec. 401.424. MAMMOGRAPHY CERTIFICATION STANDARDS.

(a) To receive a mammography certification under this subchapter, the mammography system must, at a minimum:

(1) meet criteria at least as stringent as the American College of Radiology mammography accreditation program;

(2) be specifically designed and used for the performance of mammography;

(3) be operated by an individual certified as a medical radiologic technologist under Chapter 601, Occupations Code, who meets, at a minimum, the requirements for personnel who perform mammography established by the Mammography Quality Standards Act of 1992 (42 U.S.C. Section 263b); and

(4) be used in a facility that:

(A) meets, at minimum, the requirements for certification of the Mammography Quality Standards Act of 1992 (42 U.S.C. Section 263b);

(B) has a licensed medical physicist specialized in radiology under Chapter 602, Occupations Code, who at least annually provides on-site consultation to the facility, including a complete evaluation of the entire mammography system to ensure compliance with this subchapter;

(C) maintains records of the consultations required under Paragraph (B) for not less than seven years after the date the consultation was performed;

(D) establishes a quality control program that meets requirements that are at least as stringent as those of the American College of Radiology mammography accreditation program; and

(E) maintains and makes available to a patient of the facility original mammograms performed at the facility until the earlier of either:

(i) the fifth anniversary of the

mammography or, if an additional mammogram of the same patient is not performed by the facility, the 10th anniversary of the mammography; or

(ii) at the request of the patient, the date the patient's medical records are forwarded to another medical institution.

(b) To protect the public health, the board by rule may adopt more stringent or additional requirements for:

(1) the certification of mammography systems; and

(2) the retention of original mammograms.

(c) To protect the public health, the board by rule shall adopt qualifications for a physician who reads, evaluates, and interprets a mammogram that are no less stringent than the standards of the American College of Radiology.

(d) The board shall make available to the public copies of the criteria of the American College of Radiology mammography accreditation program or the modified criteria adopted by board rule.

(e) Notwithstanding any other provision of this chapter, the standards imposed for certification under this chapter may not be less stringent than the standards imposed on a facility under the Mammography Quality Standards Act of 1992 (42 U.S.C. Section 263b). Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 759, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 14.792, eff. Sept. 1, 2001.

Sec. 401.426. APPLICATION FOR CERTIFICATION. (a) A person who owns, leases, or uses or the agent of a person who owns, leases, or uses a mammography system must file a written application for certification under Section 401.424 on a form prescribed by the board.

(b) The department may require, at any time after an application is filed, further information from the applicant and conduct inspections necessary to determine whether the application for certification should be granted or denied.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993.

Amended by Acts 1997, 75th Leg., ch. 759, Sec. 3, eff. Sept. 1, 1997.

Sec. 401.427. CERTIFICATION RENEWAL; FEES. (a) A certification is valid for three years.

(b) The board by rule may adopt a system under which certifications under this subchapter expire on various dates during the year.

(c) The board shall set and collect an annual fee for certification holders in an amount reasonable and necessary to administer this subchapter. A certification holder who fails to pay the annual fee before the date set by the board shall pay the annual fee and a late fee set by the board. The board may revoke the certification of a certification holder who does not pay the annual fee and late fee before the required date.

(d) A certification holder may renew the certification by filing an application for renewal and paying the annual fee before the date the certification expires. If a certification holder fails to renew the certification by the required date, the certification holder may renew the certification on payment of the annual fee and a late fee set by the board. If the certification is not renewed before the 181st day after the date on which the certification expired, the certification holder must apply for an original certification under this subchapter.

(e) A mammography system may not be used after the expiration date of the certification unless the holder of the expired certification has made a timely and sufficient application for renewal of the certification as provided under Section 2001.054, Government Code, and a final determination of the application by the board has not been made.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(57), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 759, Sec. 4, eff. Sept. 1, 1997.

Sec. 401.428. DENIAL, SUSPENSION, REVOCATION, OR REINSTATEMENT OF CERTIFICATION. (a) The department may deny, suspend, revoke, or reinstate a certification.

(b) The board shall adopt rules establishing the grounds for denial, suspension, revocation, or reinstatement of a certification and establishing procedures for disciplinary actions.

(c) Proceedings relating to the suspension or revocation of a certification issued under this subchapter are subject to Chapter 2001, Government Code.

(d) A person whose certification has been revoked may apply for a new certification on the expiration of one year after the date the certification was revoked.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 401.429. CERTIFICATION FOR MULTIPLE MAMMOGRAPHY SYSTEMS. (a) An applicant for certification under Section 401.426 must obtain a separate certification for each mammography system that is owned, leased, or used by the applicant.

(b) Certification of multiple mammography systems by a single applicant may be recorded on a single certification document. If multiple mammography systems are recorded on a single certification document, each specific machine certified, if any, must be identified on the certification document by referring to the machine's manufacturer, model number, and serial number.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993.

Sec. 401.430. INSPECTIONS. (a) The department shall inspect each mammography system that has not been fully certified under the Mammography Quality Standards Act of 1992 (42 U.S.C. Section 263b) not later than the 60th day after the date the certification under this subchapter is issued.

(b) The board by rule shall establish the routine inspection frequency for mammography systems that receive certification under this subchapter.

(c) The department shall make reasonable attempts to coordinate inspections under this section with other inspections required under this chapter for the facility where the mammography

system is used.

(d) After each satisfactory inspection, the department shall issue a certificate of inspection for each mammography system inspected. The certificate of inspection must be posted at a conspicuous place on or near the place where the mammography system is used. The certificate of inspection shall:

(1) specifically identify the mammography system inspected;

(2) state the name and address of the facility where the mammography system was used at the time of the inspection; and

(3) state the date of the inspection.

(e) A notice of a mammography system's failure to satisfy department standards shall be posted:

(1) on the mammography system at a conspicuous place if the system is a machine; or

(2) near the place where the mammography system practices if the system is an individual.

(f) If a facility's mammography system fails to meet the department's certification standards and the failure is a Severity Level I violation under the department's rules, the facility shall notify each patient on whom the facility performed a mammography during the 30 days preceding the date of the inspection that revealed the failure. The facility shall:

(1) inform the patient that the mammography system failed to satisfy the department's certification standards;

(2) recommend that the patient have another mammogram performed at a facility with a certified mammography system; and

(3) list the three facilities closest to the original testing facility that have a certified mammography system.

(g) In addition to the requirement of Subsection (f), the department may require a facility to notify a patient of any other failure of the facility's mammography system to meet the department's certification standards.

(h) To protect the public health, the board may adopt rules concerning the grounds for posting a failure notice and the placement and size of the failure notice, and for patient notification under Subsections (f) and (g), as appropriate.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993.
Amended by Acts 1997, 75th Leg., ch. 759, Sec. 5, eff. Sept. 1,
1997; Acts 2001, 77th Leg., ch. 1009, Sec. 9, eff. Sept. 1, 2001.