

SUBJECT: Responsibilities, fees and civil penalties for radioactive substances

COMMITTEE: Environmental Regulation — favorable, without amendment

VOTE: 5 ayes — Hancock, Driver, T. King, Kuempel, West
0 nays
2 absent — Bonnen, Lucio

SENATE VOTE: On final passage, April 17 — 29-1 (Hinojosa)

WITNESSES: For — Michael Woodward, Waste Control Specialists/LLC

Against — Eric Allmon, Kleburg County/South Texas Opposes Pollution; Elizabeth Cumberland, South Texas Opposes Pollution; Cyrus Reed, Lone Star Chapter of the Sierra Club (*Registered, but did not testify*: Andy Barrett, Uranium Energy Corporation; Karen Hadden, Sustainable Energy and Economic Development Coalition; Donna Hoffman; Kelly McBeth, Uranium Energy Corporation)

On — Kinnan Golemon, Uranium Energy Corporation; William Goranson, Texas Mining and Reclamation Association; Susan Jablonksi, Texas Commission on Environmental Quality; Ted Long, Goliad County Commissioners Court; Richard Ratliff, Texas Department of State Health Services; Don Redmond, Texas Commission on Environmental Quality

BACKGROUND: Texas holds an agreement status to regulate all radioactive material in-state, except federal facilities and nuclear power plants. The agreement with the federal government requires the state program to remain compatible with federal regulatory requirements and adequately to protect public health and safety. The Management Review Board of the U.S. Nuclear Regulatory Commission (NRC) put the Texas program on “heightened oversight,” citing the number of overdue inspections, vacant positions, and staff turnover.

The Department of Health took over regulation of uranium mining and radioactive mill tailings from the federal government in 1963 and held that

duty until it was transferred to the Texas Natural Resource Conservation Commission (TNRCC) in 1993, when that agency was created as the state's comprehensive environmental protection agency. Tailings are the dirt that remains radioactive following mining for naturally occurring radioactive materials. In 1997, the 75th Legislature enacted SB 1857 by Brown, which returned this duty to the Department of Health. It became a duty of the Department of State Health Services (DSHS) under the reorganization of Texas health and human services agencies in 2003.

In addition to regulating uranium mining and radioactive mill tailings, DSHS regulates two companies that process low-level waste from other entities. DSHS also regulates an additional 1,600 radioactive material licenses involved in health processes.

HB 1567 by West, enacted by the 78th Legislature in 2003, authorizes the Texas Commission on Environmental Quality (TCEQ), formerly TNRCC, to license one private, low-level radioactive waste disposal facility. Waste Control Specialists (WCS) is the only private company seeking this license from TCEQ to dispose of low-level radioactive waste in Andrews County. Current state regulation gives the authority to regulate the disposal of low-level radioactive waste to TCEQ and the authority to regulate processing and storage of the waste to DSHS.

To perform in situ uranium mining, meaning to drill a well to remove uranium, a business first must obtain a general permit pertaining to the overall mining activities performed in a production authorization area (PAA). Following approval for the production authorization area, an additional permit is needed for each well, whether used for uranium mining or for waste injection.

DIGEST:

SB 1604 would establish a state fee on radioactive substances and requirements for area permits and production area authorization in uranium mining. Responsibility designated to certain state agencies over radioactive substances would be modified, and TCEQ would gain jurisdiction to regulate and license the following:

- processing or storage of low-level radioactive waste or naturally occurring radioactive material waste as received, except oil and gas NORM;
- recovery or processing of source material;
- processing of a by-product material, including a radioactive

material or a tailing or waste produced from the extraction of uranium or thorium from ore; and

- disposal sites for low-level radioactive waste, by-product material, or naturally occurring radioactive material waste

State fee on radioactive substances. A holder of a license for the disposal of a radioactive substance, as issued by TCEQ, would be required to remit an amount equal to 10 percent of the license holder's gross receipts from disposal operations. Specifically, 5 percent of the gross receipts would be deposited to the general revenue fund and 5 percent would be remitted to the host county. The fee would not apply to compact waste, federal facility waste, or industrial solid waste. TCEQ could audit a license holder's financial records and other information to ensure sufficient payment of this fee.

Area permit and production area authorization for uranium mining. The commission could issue a permit authorizing the construction and operation of two or more similar injection wells in a specific area for uranium mining. An area permit would be subject to public notice requirements and contested case hearings. The permit would authorize injection for uranium recovery for a period of 10 years. Expiration of authority would not relieve the permit holder from obligations to restore groundwater and plug and abandon wells according to requirements and rules.

An authorization to conduct mining and restoration activities in production areas within permit boundaries would be issued to the holder of an area permit for uranium mining. TCEQ would establish relevant rules and requirements for this production area. An application for an authorization submitted after September 1, 2007 would not be subject to a contested case hearing or other hearing requirements. An application to amend a restoration table value would be subject to the public notice requirements and contested case hearings.

Shared duties. Current provisions on licensing and registration fees that apply to DSHS also would apply to TCEQ. These agencies would be able to collect a fee for each license and registration issued. Stipulations on fee collection would apply to both the commission and the department. Both TCEQ and DSHS would assess and collect additional fees from the applicant to recover costs incurred for administrative review, technical review and application hearings.

TCEQ would gain other duties that currently only apply to DSHS. Both agencies would be authorized to use money in the perpetual care account to pay for certain measures and provide for the closure, decommissioning, reclamation, surveillance, or other care of a site under either agency's jurisdiction. With the existence of a perpetual care account, neither the department nor the commission would be liable for actions involving certain unlawful activities with radioactive substances. Also, TCEQ and DSHS would both be permitted to seek reimbursement from the perpetual care account to remedy radioactive substance spills or contamination resulting from certain violations.

TCEQ, HHSC and the Railroad Commission would adopt memoranda of understanding defining their duties under the bill. TCEQ would officially be the state agency in charge of licensing and regulating radioactive waste storage, processing, and disposal not preemptively regulated by the federal government. Acting through a designated department, HHSC would be in charge of regulating radioactive waste activities not preemptively regulated by the federal government.

The commission, like HHSC, would be authorized to exempt a source of radiation or a type of use or user from certain licensing or registration requirements. The exemption would be permitted on the condition that the exemption did not pose a risk to public health and the environment.

Transfer of jurisdiction to TCEQ. The bill would consolidate processes pertaining to uranium mining and radioactive waste under TCEQ, thereby transferring authority from HHSC and DSHS. Health and Safety Code, sec. 401 certain provisions on radioactive materials and other sources of radiation would be amended to reflect the modifications in authority.

TCEQ would become the sole authority to do the following:

- adopt rules for the issuance of licenses for new sites for radioactive substance processing and disposal;
- issue a separate commercial storage and processing license for an applicant with a license for the disposal of radioactive substances;
- accept and evaluate security presented by license applicants to demonstrate financial qualifications before issuing or renewing a license;

- consider certain factors and provide specific criteria when granting a license for the processing or disposal of low-level radioactive waste;
- hold a public hearing before granting or renewing a license for low-level radioactive waste processing and disposal;
- issue a public notice of the hearing, mail a written notice to the owner of a property adjacent to the proposed site, prepare a written analysis on the environmental effect of the proposed activity;
- prohibit major construction on licensed activities in the processing and disposal of low-level radioactive waste;
- grant, deny, renew, revoke, suspend, or withdraw a license for the processing and disposal of low-level radioactive waste;
- assure that processing and disposal sites were closed and by-product materials were disposed of according to federal guidelines;
- grant, deny, renew, revoke, suspend, or withdraw a license for source material recovery and for storage, processing or disposal of by-product material;
- prepare a written environmental analysis when issuing, renewing or amending a license to process materials that produce by-product materials and make this information available for public comment and provide a public hearing when necessary;
- prescribe conditions for an activity resulting in the production of a by-product material when issuing, renewing or amending a radioactive substances license;
- require the transference of land to the federal government or state before termination of a license for the disposal of by-product material;
- acquire and sell certain by-product materials and sites;
- undertake certain monitoring, maintenance, and emergency measures; and
- require an action to correct or remove a threat posed by by-product material to the public health or environment and use security provided by the license holder to pay the cost of such actions

The bill would set certain provisions for the transfer of relevant powers, obligations, and funding.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

SUPPORTERS
SAY:

Transfer of jurisdiction to TCEQ. One agency should be in charge of radioactive waste storage and disposal. It makes more sense for one agency to oversee the process. TCEQ is the expert in disposal and environmental concerns because these functions are part of the agency mission. The commission has more than 100 engineers and geologists with the unique skills to understand disposal processes and environmental impact. The transfer of jurisdiction to TCEQ would provide for a more holistic regulatory approach, as TCEQ would be equipped to address the disposal, geological, engineering, and radioactive aspects of the process. Also, it would improve consistency in state regulation of the disposal process.

The licensing of WCS is an example of why the transfers of jurisdiction that would be made by this bill would be appropriate. The same company must apply for two licenses that each involve waste disposal, but one of its applications is being processed by TCEQ and another by DSHS. SB 1604 bill would decrease duplication of efforts in such instances and increase coordination of resources and concentration of expertise.

State fee on radioactive substances. The required submission of 10 percent of gross receipts would generate revenue for both the state and county governments. Because companies already cover inspection costs and would be required to provide security to cover unexpected events that could risk public safety, 100 percent of these revenues could be used for general purposes.

Right to a contested case hearing. A contested case hearing on mining activities in a production area authorization is not needed. Such a hearing would not address stated concerns, given that a hearing over a production area does not affect a company's overall ability to mine in the region covered by the area permit. The area permit establishes this authority, which is subject to a contested case hearing and public notice requirements.

OPPONENTS
SAY:

Transfer of jurisdiction to TCEQ. DSHS has an extensive history and greater expertise in regulating radioactive materials than does TCEQ. Duties should not be transferred at a time when TCEQ and DSHS are beginning to reach a better balance of authority in their respective areas of expertise. The transfer could interfere with pending applications. Moreover, concern exists that TCEQ does a poor job of overseeing uranium mining.

Right to a contested case hearing. The bill would limit the rights of local governments and citizens to hold contested case hearings regarding production areas in uranium mining. These hearings serve as an important tool for concerned groups to prevent the negative environmental and public health outcomes of mining activities. With renewed interest in mining due to the increased price of uranium, citizens should be assured the right to a contested case hearing. Alternatively, other provisions should be inserted into SB 1604 to ensure public participation in the authorization process for uranium mining.

The right to a contested case hearing for production areas earns special importance in Kleberg County, where ongoing legal battles occur between citizen groups and a mining company. Some are concerned that groundwater could be contaminated as a result of mining activities.

NOTES:

According to the fiscal note, the bill would result in a gain to general revenue of \$3.7 million in fiscal 2009.