

Comments of Individual Texas Radiation Advisory Board Members

Rule Log No. 2003-037-336-WS for proposed rules:

30 TAC Chapter 37, Subchapter T, Financial Assurance for Disposal of Low-Level Radioactive Waste

30 TAC Chapter 39, Public Notice

30 TAC Chapter 305, Consolidated Permits

30 TAC Chapter 336, Radioactive Substance Rules

Odis Mack, Insurance Member

§37.9050 on Financial Assurance Mechanisms, relating to Part (f) allowing insurance as a mechanism

1. Choose financially-sound insurance companies with a minimum of \$50-80 billion in assets and the highest rating from the insurance rating institutions such as Best, etc.
2. Exclude companies in the "substandard" insurance category and include companies that are members of the Texas Guarantee Fund.
3. Exclude all policies that may include sudden and accidental clauses. Look for an "All Risk Policy."
4. Ask the writing agent about his "errors and omissions" insurance coverage and limits. This is a very important factor if there is a coverage question.
5. Ask for the opportunity to design this product with head underwriter of the company. Know your exact coverage and exclusions!

Comments and questions from TRAB meeting discussion:

1. In allowing insurance as a financial assurance mechanism, if there is an event of human error, if there is a loss, a company will look for the exclusions.
2. Consider the \$20 million dollars over time that the permit runs, dollars now will not be close to what is needed later.
3. Are there companies that will write this type of policy?
4. Financial strength of the company will be important.
5. Sudden and accidental are key words for coverage in insurance. If it is not that, it comes under 'maintenance' and that is where coverage issues will be of concern for exclusions.

Comments of Individual Texas Radiation Advisory Board Members

Earl Erdmann, Well Service Industry

Health and Safety Code Sec. 401.204 provisions on acquisition of property and the respective parts of the TCEQ proposed rules in §336.808 Ownership of Land and Buildings

1. Mineral rights - How will assurance be guaranteed that slant drilling is prohibited? Is this possible or permissible? (Law states "to the extent permissible...")
2. Condemnation - Could you explain details on this? In particular, will the state be exercising eminent domain powers?
3. Who will be paying for the mineral rights that are to be taken if that is the case?
4. Regarding condemnation, who will put a value on the minerals?
5. Before a license can be issued, this must all be taken care of, correct?
6. What if someone does not want to sell the mineral rights?

Comments and questions from TRAB meeting discussion:

§37.9050 Section Financial Assurance Mechanisms, relating to Part (f) allowing insurance as a mechanism

1. After decommissioning, what happens with the insurance policy? Can you go into detail on this?
2. If the federal government takes over the site, will they take the liability?
3. If there is an event, not an act of God, it will be a mistake not covered by insurance. I want to make sure this will be paid for.

General Comments and Questions:

1. Our job as a board, number one, is to protect Texas residents. But we also need to make this as feasible as possible because we need a disposal site.
2. Is Maine still liable to pay the fee to Texas even though the state is dropping out of the Compact?

Michael S. Ford, Waste Industry Member and TRAB Chair

Chapter 305 – Consolidated Permits / Rule Log No. 2003-037-336 - No Comment.

Chapter 39 – Public Notice / Rule Log No. 2003-037-336 - No Comment.

Chapter 37 – Financial Assurance / Rule Log No. 2003-037-336

1. Page 24, “Corrective action” definition. Why is there a distinction being made between “the” compact waste disposal facility and “a” federal waste disposal facility?

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2. Page 24, “Post closure” definition and *throughout* the document: Use of “which” versus “that.” The regulatory framework and language requires preciseness in word usage. “That” is the defining or restrictive pronoun, while “which” is the non-defining or non-restrictive pronoun. The definition should properly read “The activities that are identified” “That” and “which” are not interchangeable. Ref. The Elements of Style, Strunk & White, p. 59.
3. Page 25, §37.9045(a). The concept of “liability coverage” is introduced in this paragraph, but there is no further development in subsequent paragraphs and the balance of the discussion is silent on “liability coverage.” Ref. §37.9045(a)(1 – 6) through (b).
4. Page 27, §37.9050(f). Revise to read “... by obtaining insurance *that* conforms to the requirements” This defines the type of insurance.
5. Page 27, §37.9050(f)(2). This paragraph is close to incomprehensible. Recommend breaking it down into smaller requirements and subrequirements that are more readily understood by the public.
6. Page 30, §37.9050(f)(11). There is a significant problem presented here where the executive director is authorized to withhold payment **after approved work** has been completed in the event that the forecasted work costs may outstrip the available funds. If there is a question on the availability of adequate funding for the anticipated work, the decision on funding and payment should be made **prior to** the commencement of work, or the work should be performed under a task-order type contract with sufficient subdivision to allow the appropriate monitoring of cost.
7. Page 30, §37.9050(f)(13). This bears out the fact that the “insurance” is not really “insurance”, if there is a 100% probability that the policy will be paid out in full at the end of a given period. Are there any insurance vehicles/companies that will write such a policy?
8. Page 32, §37.9060(b &c). “Sudden accidental occurrences” and “non- sudden accidental occurrences” need to be defined. Also, the difference in liability coverage for the occurrence types needs to be described.

Chapter 36 – Radioactive Substance Rules/ Rule Log No. 2003-037-336-WS

1. Page 37, Professional Services: What is the basis for a 3.5 multiplier for contractor fringe and indirect costs? This seems exorbitant. Do the cost estimates reflect those multipliers?
2. Page 39, ¶2. Delete “Radiation and” in the second sentence beginning with “HB 1678.”
3. Page 40, ¶3. Is it correct to conclude that if the monies from the Compact partners do not materialize, then an applicant would be responsible for picking up the approximately \$6M tab? This appears to be the case and would appear to be prohibitive in nature.
4. Page 55, definition for “Demand respirator.” This is most commonly referred to as an “air purifying respirator.”

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5. Page 56, definition of DAC-hr continued from previous page. Change “five” to “5” in the last sentence. This is an integer value. See additional comments below on the use of words instead of figures for numerical values requiring comparison to maintain compliance.
6. Page 56, definition of “Distinguishable from background.” Insert the words “naturally-occurring” between the words “the” and “background.” Otherwise, the definition allows the inclusion of pre-existing man-made radioactivity in the area of interest.
7. Page 61, definition of “Individual monitoring” subparagraph (B). Recommend adding “1 DAC-hr = 2.5 mrem.”
8. Page 65, definition of “Mixed waste.” Add the words “and low level radioactive waste” to the end of the sentence.
9. Page 68, definition of “Perpetual care account.” Delete the words “radiation and” to be consistent with the balance of the document.
10. Page 70, definition of “Radiation and Perpetual Care Account.” This definition should be deleted since it has been changed to that described in comment 9 above.
11. Page 75, definition of “Special nuclear material in quantities not sufficient to form a critical mass.” The word change to this paragraph should be rejected. A desired ratio limit of “1” should not be replaced by the word “one” since it implies no level of desired precision.
12. Page 84, §336.103(a). Significant concern presented with the language in this paragraph. Again, is it correct to conclude that **if** the monies from the Compact partners do not materialize, then an applicant would be responsible for picking up the approximately \$6M tab? This appears to be the case and would appear to be prohibitive in nature.
13. Page 84, §336.103(c). Is the requirement of an “annual license fee” in conflict with HB 2292, or was that restricted to TDH licenses.
14. Page 102, §336.703. Does “concepts” refer to “design concepts?” This should be clarified. How does an applicant go about demonstrating that they’ve done an adequate job of “considering” the concepts called out in 10 CFR 61.7? Given the vagueness of the wording, this requirement is very weak and lacks enforceability.
15. Page 106, §336.708(a)(11). Revise to read, “a decommissioning, site closure and stabilization plan possessing those design features that are intended to facilitate disposal site closure”
16. Page 107, §336.709. The first paragraph appears to be missing an “(a).”
17. Page 107, §336.709(a?)(1). The words “reasonable assurance” in the third sentence need to be defined so that a consistent standard might be established.
18. Page 107, §336.709(a?)(1). The concept of “peak dose” needs to be better defined. Over the span of 1,000 years, there is no specified period over which the peak dose is to be calculated. Is it “peak dose” in any given year?

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19. Page 110, §336.717(a). The last sentence should direct the reader to the location of the requirements on the federal facility waste facility.
20. Page 112, §336.723. The words “reasonable assurance” need to be defined so that a consistent standard might be established.
21. Page 117, §336.736(e). The terms “sudden and non-sudden accidental occurrences” need to be defined. If they are described in a federal requirements document, that document(s) needs to be referenced.
22. Page 124, §336.805. The first paragraph appears to be missing an “(a).”
23. Page 125, §336.805(a?)(3). The term “reasonableness” presents a very weak standard and should be modified to present a more objective standard.
24. Page 126, §336.807(d)(6). The administrative review should require a design beyond the conceptual and should require the review of the design, not a “description of the “design features.”
25. Page 129, §336.8089(c). We should not allow the condemnation of land to allow the construction of a low level waste site. This requirement should be deleted.
26. Page 132 – 140, §336.815. Tier 1 – 4 Criteria. How are the listed criteria used in the scoring of applications? Please define.
27. Page 135, §336.815(c)(2-3). How does one define “acceptable” operational safety and “acceptable” long-term safety? What is “long-term?” Is this 1000 yrs or something shorter? These criteria are far too subjective. The Commission needs to provide objective guidance for these criteria, e.g., “operational safety programs directed toward employee-driven safety and minimizing occupational injuries.”
28. Page 135, §336.815(d)(1)(b). What are “unanticipated extraordinary events?” These are not defined within the document. Given the potential scale and magnitude of such events, the licensee should be provided some guidance in this area.
29. Page 143, §336.905(a). The volume limit should be stated as “3 million cubic yards”, not “three million cubic yards.” The commingling of word-based (three million) and numerical (300,000) standards does not make any sense. Even if the value is less than 10, numerical values (or standards) should be identified with figures with the required precision as well. Ref. US Government Printing Office Style Manual, pp 165-171, 1984
30. Page 143, §336.905(b). See previous comment. The same problem exists here with “three” and “six” million cubic yards and “300,000” and “600,000” cubic yards.
31. Page 144, §336.909(2). It should be stipulated that the “federal government official” should have authority to engage in such agreements.

Comment and question from TRAB meeting discussion:

An exemption must be applied for from Subchapter H regarding fee simple title, correct?

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Troy Marceleno, Public Member

Comments and questions from TRAB meeting discussion:

§37.9050 Section Financial Assurance Mechanisms, relating to Part (f) allowing insurance as a mechanism

1. Regarding insurance, what about an event subsequent to the first event?
2. What if the first event takes the \$20 million?
3. Will the insurance company go beyond that? Annual aggregates and so forth limit the amount for one year.
4. There is such a long duration on the permit. What will be enough?

§336.805(a?)(3)

In rules that reference “reasonable” could you provide some examples so that there is an indication of what is considered “reasonable?” Could you give qualifiers?

Jimmy Barker, Nuclear Utility Member

§37.9050 Section Financial Assurance Mechanisms, relating to Part (f) allowing insurance as a mechanism

Insurance is for catastrophic events. It should be clear that the licensee cannot go to the insurance carrier everytime something goes wrong. The licensee should be the responsible entity; that is standard practice. Decommissioning fees should be in place, and it seems the insurer would not want to take on those responsibilities.

General comments:

1. What is the status of Maine in the Compact?
2. We should be careful in enhancing any federal rules because of compatibility issues. This might trigger a compatibility review that takes a great deal of time and could delay the licensing process.