

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Proposed Rulemaking

AGENDA REQUESTED: December 7, 2011

DATE OF REQUEST: November 18, 2011

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Bruce McAnally, (512) 239-2141

CAPTION: Docket No. 2011-1905-RUL. Consideration for publication of, and hearing on, the proposed amendment to Section 336.702 and proposed new Sections 336.745 and 336.747 of 30 TAC Chapter 336, Radioactive Substance Rules.

The proposed rulemaking would revise the commission's radiation control rules to implement Senate Bill 1504, 82nd Legislature, 2011, Regular Session. The proposed rulemaking would establish requirements at the licensed low-level radioactive compact waste disposal facility for the disposal of party state compact waste that has been commingled with waste from other sources at a commercial waste processing facility. The proposed rulemaking would also add definitions and prohibit the receipt and disposal of waste of international origin. (Hans Weger, Don Redmond) (Rule Project No. 2011-036-336-WS)

Brent Wade
Deputy Director

Susan Jablonski, P.E.
Division Director

Bruce McAnally
Agenda Coordinator

Copy to CCC Secretary? NO

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** November 18, 2011

Thru: Bridget Bohac, Chief Clerk
Mark R. Vickery, P.G., Executive Director

From: Brent Wade, Deputy Director
Office of Waste

Docket No.: 2011-1905-RUL

Subject: Commission Approval for Proposed Rulemaking
30 TAC Chapter 336, Radioactive Substance Rules
SB 1504: Phase I
Rule Project No. 2011-036-336-WS

Background and reason(s) for the rulemaking:

The revisions in Texas Health and Safety Code (THSC), §401.207 implemented in this rulemaking address the availability and reservation of disposal capacity in the compact waste disposal for low-level radioactive waste (LLRW) generated in a party state to the Texas Compact and the realities of commercial radioactive waste processing activities where party state compact waste may become commingled with waste from other sources.

Senate Bill (SB) 1504 (2011, 82nd Legislature) revised THSC, §401.207 to require the commission to adopt rules that establish criteria and thresholds by which incidental commingling of party state compact waste and waste from other sources at a commercial processing facility is considered and reasonably limited. SB 1504 also adds new definitions in THSC, §401.2005 and prohibits the acceptance of waste of international origin in THSC, §401.207. The commission is required to coordinate its rulemaking with the Texas Low-Level Radioactive Waste Disposal Compact Commission, but any criteria and thresholds established by the commission rule are binding on any criteria and thresholds established by the Texas Low-Level Radioactive Waste Disposal Compact Commission.

Other provisions of SB 1504, including the setting of interim disposal rates, commission studies, and imposition of fee surcharges will be implemented by the Texas Commission on Environmental Quality in separate actions.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The rulemaking proposes in §336.702 new definitions of "commercial processing," "commingle," "incidental," "party state compact waste," "waste from other sources," and "waste of international origin." Because the new provision in THSC, §401.207(k) addresses only the *incidental* commingling of party state compact waste with waste from

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other sources and "incidental" is not defined in statute, the proposal preamble specifically invites comments on what incidental means.

The rulemaking proposes in §336.745 implements THSC, §401.207(k) to prohibit the disposal of LLRW that contains party state waste that has been commingled at a commercial processing facility, except as provided in §336.745. Under §336.745(b), the commingled waste cannot be disposed if the radioactivity of the waste from other sources exceeds 5% of the total activity of the waste from other sources. The preamble will specifically solicit comments on this limitation based on the radioactivity content. Proposed §336.745(c) will prohibit the disposal of commingled waste unless the commingling was incidental to the processing of the waste at a commercial processing facility. In order to ensure that waste that has been commercially processed meets the requirements with respect to commingling, under proposed §336.745(d), the licensee will be required to submit a report to the executive director that identifies the generator of the waste; the processor of the waste; the processing methods; and the volume, physical form, and activity of the processed waste. The licensee and the processor must certify whether party state compact waste has been commingled with LLRW from other sources. If party state compact waste has been commingled with waste from other sources, the report must identify each generator of the waste from other sources, certify that the activity content of the waste from other sources does not exceed 5% of the total activity, and certify that the commingling of the waste was incidental to the processing of the party state compact waste.

Proposed new §336.747 implements THSC, §401.207, which prohibits the acceptance of waste of international origin.

B.) Scope required by federal regulations or state statutes:

This rulemaking is required by new THSC, §401.207(k) , which is added by SB 1504.

C.) Additional staff recommendations that are not required by federal rule or state statute:

Statutory authority:

THSC, §401.207, Out-of-State Waste; 401.011, Radiation Control Agency; 401.051, Adoption of Rules and Guidelines; 401.103, Rules and Guidelines for Licensing and Registration; 401.104, Licensing and Registration Rules; and 401.412, Commission Licensing Authority.

Effect on the:

A.) Regulated community:

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This rulemaking will affect the compact waste disposal facility license holder, commercial processors of LLRW, generators of LLRW, and the Texas Low-Level Radioactive Waste Compact Commission.

B.) Public:

There is general public interest in the activities at the compact waste disposal facility, but the rulemaking affects those who dispose, process or generate LLRW.

C.) Agency programs:

Office of Waste: Staff review of reports submitted under new §336.745 will be required to address the receipt and disposal of waste that has been processed at a commercial waste processing facility. No additional full-time employees (FTEs) are required.

Environmental Law Division: Legal support for the Office of Waste, as necessary. No additional FTEs are required.

Stakeholder meetings:

There will be a public hearing on the rule proposal on January 12, 2012. Stakeholder meetings were not held prior to the rule proposal.

Potential controversial concerns and legislative interest:

Controversy may be expected. There may be contrasting views on the definition of "Incidental" for determining when commingling of waste from different sources is incidental to the processing of the waste; there may be contrasting views on how much radioactivity in waste from other sources should be allowed in the commingled waste; and there may be contrasting views on what information must be submitted to the agency prior to the disposal of waste that has been processed at a commercial disposal facility.

Will this rulemaking affect any current policies or require development of new policies?

No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

TCEQ is required by state statute to adopt rules on the incidental commingling of party state compact waste with waste from other sources.

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Key points in the proposal rulemaking schedule:

Anticipated proposal date: December 7, 2011
Anticipated *Texas Register* publication date: December 23, 2011
Public hearing date (if any): January 12, 2012
Public comment period: January 23, 2012
Anticipated adoption date: May 16, 2012

Agency contacts:

Hans Weger, Rule Project Manager, 239-6465, Radioactive Materials Division
Tonya Baer, IGR Liaison, 239-1233, Intergovernmental Relations
Don Redmond, Staff Attorney, 239-0612
Bruce McAnally, Texas Register Coordinator, 239-2141

Attachments

Senate Bill 1504

cc: Chief Clerk, 2 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Anne Idsal
Curtis Seaton
Ashley Morgan
Office of General Counsel
Hans Weger
Bruce McAnally

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes an amendment to §336.702 and proposes new §336.745 and §336.747.

Background and Summary of the Factual Basis for the Proposed Rules

The changes proposed to this chapter will revise the commission's radiation control rules to implement certain provisions of Senate Bill (SB) 1504 (82nd Legislature, 2011) and its amendments to Texas Health and Safety Code (THSC), Chapter 401, also known as the Texas Radiation Control Act (TRCA). This proposed rulemaking establishes provisions for incidental commingling of low-level radioactive waste (LLRW) accepted for disposal at the Texas Compact LLRW disposal facility. This proposed rulemaking also adds new definitions and implements the statutory prohibition on the acceptance of waste of international origin. An additional rulemaking is anticipated to implement other provisions of SB 1504 and THSC at a later date.

The commission recognizes that the revisions in THSC, §401.207(k) address the legislature's attempt to reconcile the goal to assure that there is adequate capacity in the compact waste disposal facility for party state compact waste and accommodate current commercial waste processing techniques that may result in the incidental commingling of party state compact waste with some waste from other sources. THSC, §401.207(k) requires the commission, in coordination with the Texas Low-Level Radioactive Waste Disposal Compact Commission, to adopt rules establishing criteria and thresholds by

which incidental commingling of party state compact waste and waste from other sources at a commercial processing facility is considered and reasonably limited. The criteria and thresholds for commingling established by the commission are binding on any criteria and thresholds that may be established by the Texas Low-Level Radioactive Waste Disposal Compact Commission.

Section by Section Discussion

Subchapter H, Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste

§336.702, Definitions

The commission proposes additional definitions to §336.702. The definition of "Commercial processing" is proposed to implement THSC, §401.207(k). The definition of processing is consistent with the definition of processing in §336.1203 and would include processing activities that occur outside the State of Texas. The commission proposes the definition of "Commingling" which was not defined in SB 1504. The commission proposes the definition of "Incidental" which was not defined in SB 1504. Because new THSC, §401.207(k) only applies to incidental commingling of party state compact waste with waste from other sources, the commission intends to define what makes commingling incidental. The proposed definition excludes intentional actions where wastes from different generators are purposefully combined. The proposed definition is based on some risk to occupational or public health and safety or the

environment that prevents the party state compact waste from being kept separate from waste from other sources. The commission requests comments on the definition of "Incidental." The commission proposes the definition of "Party state compact waste" consistent with new THSC, §401.2005(8). The commission proposes the definition of "Waste from other sources" as LLRW that is not party state compact waste. The commission proposes the definition of "Waste of international origin" to consistent with new THSC, §401.2005(9).

§336.734, Incidental Commingling of Waste

The commission proposes new §336.745 to establish criteria and thresholds by which incidental commingling of party state compact waste and waste from other sources at a commercial processing facility is considered and reasonably limited. Section 336.745(a) prohibits the disposal of LLRW that contains party state compact waste that has been commingled at a commercial processing facility with waste from other sources except as authorized in §336.745. Subsection (b) limits the radioactivity content of waste from other sources to 5% of the total activity of the commingled waste. The 5% limitation corresponds to the Texas Low-Level Radioactive Waste Disposal Compact Commission's limitation in 31 TAC §675.22(c)(2). The commission invites comments on the establishment of this 5% limitation. Subsection (c) prohibits the disposal of LLRW that contains party state compact waste that has been commingled with waste from other sources if the commingling was not incidental to the processing. Because the statute

allows only incidental commingling, the intentional commingling of waste from different generators is not authorized. Subsection (d) requires the licensee's submission of a report to the executive director to ensure that commercially processed waste comports to the commingling requirements. If the licensee intends to dispose of waste that has been commercially processed, the licensee must submit a report identifying the generator; the waste processor; the waste processing methods; and the volume, physical form and radioactivity of the processed waste. If waste is not commingled, the report must certify that party state compact waste has not been commingled with waste from other sources. If the waste contains party state compact waste that has been commingled at a commercial processing facility with waste from other sources, the report must provide additional information, including: the identity of each generator; certification that the radioactivity content of waste from other sources does not exceed 5% of the total activity and documentation of the methodology for determining the radioactivity content; and certification that the commingling was incidental to the processing of the waste. The licensee may not dispose LLRW that has been commercially processed without submitting the report required in §336.745(d). The proposed rule requires that the report must be provided ten days prior to the receipt of the waste. The commission invites comment on the timing of the report's submission. The criteria and thresholds for commingling under this section are binding on any criteria and thresholds that may be established by the Texas Low-Level Radioactive Waste Disposal Compact Commission.

§336.747, Waste of International Origin

The commission proposes new §336.747 to implement new THSC, §401.207(c) which prohibits the acceptance and disposal of waste of international origin.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Analyst in Strategic Planning and Assessment, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency and no fiscal implications are anticipated for other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rulemaking implements a portion of SB 1504 and revises the commission's radiation control rules by providing criteria for the incidental commingling of LLRW. In order to implement the SB 1504 requirements, the agency would adopt rules, implement any necessary reporting requirements, and ensure compliance. Any administrative costs associated with these activities are not expected to be significant.

PUBLIC BENEFITS AND COSTS

Mr. Horvath has also determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated from the changes seen in the proposed rulemaking will be compliance with state law and a potential limitation of liability to the state due to a prohibition on acceptance of unauthorized waste streams.

The proposed rulemaking is not expected to have fiscal implications for any individuals. One licensee currently authorized for commercial LLRW disposal issued under Chapter 336 must comply with the proposed rules. There may be fiscal implications for this particular licensee due to increased reporting requirements, but these fiscal implications are not expected to be significant.

The proposed rulemaking establishes criteria and thresholds for the incidental commingling of party state compact waste and waste from other sources at a commercial processing facility. In general, intentional commingling of LLRW from more than one generator is prohibited in order to attribute each waste shipment to a specific generator. Incidental commingling of LLRW as a result of commercial processing would be permissible under certain circumstances and within certain limits. The proposed rulemaking may result in some fiscal implications due to the potential of increased reporting requirements for one licensee authorized for commercial disposal of LLRW, but any costs are not expected to be significant.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. No small or micro-businesses are authorized for the commercial disposal of LLRW.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rulemaking is required to comply with state law and does not adversely affect a small or micro-business in a material way for the first five years that the proposed rulemaking is in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Government Code. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because there are no significant requirements imposed on radioactive material licensees. The commission proposes this rulemaking for the purpose of implementing state legislation that requires the commission to adopt rules addressing the incidental commingling of party state compact waste with waste from other sources. The proposed rules also add definitions and implement a statutory prohibition on the receipt and disposal of waste of international origin.

Furthermore, the proposed rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government

Code, §2001.0225 only applies to a major environmental rule, the result of which is to:

1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor adopt a rule solely under the general powers of the agency.

The TRCA, THSC, Chapter 401, authorizes the commission to regulate the disposal of LLRW in Texas. THSC, §§401.051, 401.103, and 401.104 authorize the commission to adopt rules for the control of sources or radiation and the licensing of the disposal of radioactive materials. New THSC, §401.207(k) specifically requires the commission to adopt rules establishing criteria and thresholds for the incidental commingling of party state compact waste with waste from other sources. In addition, the State of Texas is an Agreement State, authorized by the Nuclear Regulatory Commission (NRC) to administer a radiation control program under the Atomic Energy Act. The proposed rulemaking does not exceed the standards set by federal law. The proposed rulemaking implements new requirements in state statutes enacted in SB 1504.

The proposed rulemaking does not exceed an express requirement of state law. The TRCA, THSC, Chapter 401 establishes general requirements for the licensing and disposal of radioactive materials. The TRCA in THSC, §401.207(k) specifically requires the commission to establish criteria and thresholds relating to the commingling of waste.

The commission has also determined that the proposed rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency of the federal government. The State of Texas has been designated as an Agreement State by the NRC under the authority of the Atomic Energy Act. The Atomic Energy Act requires that the NRC find that the state radiation control program is compatible with the NRC's requirements for the regulation of radioactive materials and is adequate to protect health and safety. The commission determined that the proposed rules do not exceed the NRC's requirements nor exceed the requirements for retaining status as an Agreement State.

The commission also determined that the rulemaking is proposed under specific authority of the TRCA, THSC, Chapter 401. THSC, §§401.051, 401.103, and 401.104 authorize the commission to adopt rules for the control of sources or radiation and the licensing of the disposal of radioactive materials. New THSC, §401.207(k) specifically

requires the commission to adopt rules establishing criteria and thresholds relating to the commingling of waste.

The commission invites public comment of the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated these proposed rules and performed a preliminary assessment of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the rules is to implement statutory requirements establishing criteria and thresholds for the disposal of LLRW that contains party state compact waste that has been commingled with waste from other sources. The proposed rules also add definitions and implement a statutory prohibition of the acceptance and disposal of waste of international origin.

Promulgation and enforcement of the proposed rules would be neither a statutory nor a constitutional taking of private real property because the proposed rules do not affect real property. Because the proposed rules do not affect real property, the rules do not burden, restrict or limit an owner's right to real property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. The proposed rules establish criteria and thresholds relating to the commingling of party

state compact waste with waste from other sources and implement a prohibition already established in state statute. Therefore, the proposed rules will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed this proposed rulemaking action and determined that the proposed rule is neither identified in, nor will it affect, any action/authorization identified in Coastal Coordination Act Implementation Rules in 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP).

Therefore, the proposed rulemaking action is not subject to the CMP.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on January 12, 2012, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing;

however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Ms. Sandy Wong, Office of Legal Services at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2011-036-336-WS. The comment period closes January 23, 2012. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.texas.gov/nav/rules/propose_adopt.html. For further information, please contact Susan Jablonski, Radioactive Materials Division, (512) 239-6731.

**SUBCHAPTER H: LICENSING REQUIREMENTS FOR NEAR-SURFACE
LAND DISPOSAL OF LOW-LEVEL RADIOACTIVE WASTE**

§§336.702, 336.745, 336.747

Statutory Authority

The amendment and new rules are proposed under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.201, which provides authority to the commission to regulate the disposal of low-level radioactive waste; §401.207, which authorizes the commission to adopt rules establishing criteria and thresholds; and §401.412, which provides authority to the commission to regulate licenses for the disposal of radioactive substances. The proposed amendment and new rules are also authorized by Texas Water Code, §5.103, which provides the commission

with the authority to adopt rules necessary to carry out its powers and duties under the water code and other laws of the state.

The proposed amendment and new rules implement THSC, Chapter 401, including §§401.011, 401.051, 401.057, 401.059, 401.103, 401.104, 401.151, 401.201, 401.2005, 401.207, 401.301, and 401.412.

§336.702. Definitions.

Terms used in this subchapter are defined in §336.2 of this title (relating to Definitions). Additional terms used in this subchapter have the following definitions.

(1) Active maintenance--Any significant remedial activity needed during the period of institutional control to maintain a reasonable assurance that the performance objectives in §336.724 of this title (relating to Protection of the General Population from Releases of Radioactivity) and §336.725 of this title (relating to Protection of Individuals from Inadvertent Intrusion) are met. Active maintenance includes ongoing activities such as the pumping and treatment of water from a disposal unit or one-time measures such as replacement of a disposal unit cover. Active maintenance does not include custodial activities such as repair of fencing, repair or replacement of monitoring equipment, revegetation, minor additions to soil cover,

minor repair of disposal unit covers, and general disposal site upkeep such as mowing grass.

(2) Buffer zone--A portion of the disposal site that is controlled by the licensee and that lies under the disposal units and between the disposal units and the boundary of the disposal site.

(3) Chelating agent--A chemical or complex which causes an ion, usually a metal, to be joined in the same molecule by relatively stable bonding, e.g., amine polycarboxylic acids (e.g., EDTA, DTPA), hydroxycarboxylic acids, and polycarboxylic acids (e.g., citric acid, carboic acid, and gluconic acid).

(4) Commencement of major construction--Any clearing of land, excavation, or other substantial action that would adversely affect the environment of a land disposal facility. The term does not mean disposal site exploration, necessary roads for disposal site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the disposal site or the protection of environmental values.

(5) Commercial processing--the storage, extraction of materials, transfer, volume reduction, compaction, incineration, solidification, or other separation and

preparation of radioactive substances from other persons for reuse or disposal, including any treatment or activity that renders the waste less hazardous, safer for transport, or amenable to recovery, storage, or disposal.

(6) Commingling--any mixing, blending, down-blending, diluting, or other processing that combines radioactive substances from two or more generators resulting from the commercial processing of radioactive substances.

(7) [(5)] Containerized Class A waste--Class A low-level radioactive waste which presents a hazard because of high radiation levels. High radiation levels are radiation levels from an unshielded container that could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 millisievert) in one hour at 30 centimeters from any surface of the container that the radiation penetrates.

(8) [(6)] Custodial agency--A government agency designated to act on behalf of the government owner of the disposal site.

(9) [(7)] Disposal site--That portion of a land disposal facility which is used for disposal of waste. It consists of disposal units and a buffer zone.

(10) [(8)] Disposal unit--A discrete portion of the disposal site into which waste is placed for disposal. For near-surface disposal, the disposal unit is usually a trench.

(11) [(9)] Engineered barrier--A man-made structure or device that is intended to improve the land disposal facility's ability to meet the performance objectives in this subchapter.

(12) [(10)] Explosive material--Any chemical compound, mixture, or device which produces a substantial instantaneous release of gas and heat spontaneously or by contact with sparks or flame.

(13) [(11)] Government agency--Any executive department, commission, independent establishment, or corporation, wholly or partly owned by the United States of America or the State of Texas and which is an instrumentality of the United States or the State of Texas; or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the government.

(14) [(12)] Hydrogeologic unit--Any soil or rock unit or zone which by virtue of its porosity or permeability, or lack thereof, has a distinct influence on the storage or movement of groundwater.

(15) [(13)] Inadvertent intruder--A person who might occupy the disposal site after closure and engage in normal activities, such as agriculture, dwelling construction, or other pursuits in which the person might be unknowingly exposed to radiation from the waste.

(16) Incidental--unintentional actions that, with respect to commingling of waste, prevent party state compact waste from being kept separate from waste from other sources without undue risk to occupational or public health and safety or the environment.

(17) [(14)] Intruder barrier--A sufficient depth of cover over the waste that inhibits contact with waste and helps to ensure that radiation exposures to an inadvertent intruder meet the performance objectives set forth in this subchapter, or engineered structures that provide equivalent protection to the inadvertent intruder.

(18) [(15)] Monitoring--Observing and making measurements to provide data to evaluate the performance and characteristics of the disposal site.

(19) Party state compact waste--low-level radioactive waste generated in a party state of the Texas Low-Level Radioactive Waste Disposal Compact.

(20) [(16)] Pyrophoric material--

(A) Any liquid that ignites spontaneously in dry or moist air at or below 130 degrees Fahrenheit (54.5 degrees Celsius); or

(B) Any solid material, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited readily and when ignited burns so vigorously and persistently as to create a serious transportation, handling, or disposal hazard. Included are spontaneously combustible and water-reactive materials.

(21) [(17)] Reconnaissance-level information--Any information or analysis that can be retrieved or generated without the performance of new comprehensive site-specific investigations. Reconnaissance-level information includes, but is not limited to, relevant published scientific literature; drilling records required by the commission or other state agencies, such as the Railroad Commission of Texas and the Texas Natural Resources Information System; and reports of governmental agencies.

(22) [(18)] Site--The contiguous land area where any land disposal facility or activity is physically located or conducted including adjacent land used in connection with the land disposal facility or activity, and includes soils and groundwater

contaminated by radioactive material. Activity includes the receipt, storage, processing, or handling of radioactive material for purposes of disposal at a land disposal facility.

(23) [(19)] Site closure and stabilization--Those actions that are taken upon completion of operations that prepare the disposal site for custodial care and that assure that the disposal site remain stable and not need ongoing active maintenance.

(24) [(20)] Stability--Structural stability.

(25) [(21)] Surveillance--Observation of the disposal site for purposes of visual detection of need for maintenance, custodial care, evidence of intrusion, and compliance with other license and regulatory requirements.

(26) [(22)] Waste--See "low-level radioactive waste" as defined in §336.2 of this title (relating to Definitions).

(27) Waste from other sources--any low-level radioactive waste that is not party state compact waste.

(28) Waste of international origin--low-level radioactive waste that originates outside of the United States or territory of the United States, including waste subsequently stored or processed in the United States.

§336.745. Incidental Commingling of Waste.

(a) A licensee authorized to dispose of waste from other persons may not dispose low-level radioactive waste that contains party state compact waste that has been commingled at a commercial processing facility with waste from other sources except as provided in this section.

(b) A licensee may not dispose low-level radioactive waste that contains party state compact waste that has been commingled at a commercial processing facility with waste from other sources if the radioactivity of the waste from other sources exceeds 5% of the total activity of the commingled waste.

(c) A licensee may not dispose low-level radioactive waste that contains party state compact waste that has been commingled at a commercial processing facility with waste from other sources unless the commingling was incidental to the processing of the waste.

(d) Ten days prior to the receipt of low-level radioactive waste that has been commercially processed:

(1) The licensee shall submit a report to the executive director that identifies the generator of the low-level radioactive waste by name, address, and license number; the processor of the low-level radioactive waste by name, address, and license number; the methods used to process the waste; and the volume, physical form and activity of the processed waste received for disposal at the compact waste disposal facility:

(2) If the waste does not contain party state compact waste that has been commingled at a commercial processing facility with waste from other sources, the licensee and the processor shall certify that party state compact waste has not been commingled with low-level radioactive waste from other sources; and

(3) If the waste contains party state compact waste that has been commingled at a commercial processing facility with waste from other sources, the report submitted under paragraph (1) of this subsection must:

(A) identify each generator of the waste from other sources by name, address, and license number;

(B) certify that the radioactivity content of waste from other sources does not exceed 5% of the total activity of the commingled waste and provide documentation of how the radioactivity content was determined; and

(C) certify that the commingling of the waste was incidental to the processing of the waste and that the commingled waste could not have been kept separate without undue risk to occupational or public health and safety or the environment.

(e) The licensee may not dispose of low-level radioactive waste that has been commercially processed without submitting the report required in subsection (d) of this section.

§336.747. Waste of International Origin.

The licensee may not receive or dispose of waste of international origin at a land disposal facility licensed under this chapter.

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relating to the disposal or storage of waste at, or adjacent to, the Texas Low-Level Radioactive Waste Disposal Compact waste disposal facility.

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

SECTION 1. Section 401.2005, Health and Safety Code, is amended by amending Subdivision (1) and adding Subdivisions (1-a), (1-b), (6-a), (8), and (9) to read as follows:

(1) "Compact" means the Texas Low-Level Radioactive Waste Disposal Compact established under Section 403.006.

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

(A) is originally generated onsite 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~~].

(1-b) "Curie capacity" means the amount of the radioactivity of the waste that may be accepted by the compact waste disposal facility as determined by the commission in the compact waste disposal facility license.

(6-a) "Nonparty compact waste" means low-level radioactive waste imported from a state other than a party state as authorized under Section 3.05(6) of the compact.

(8) "Party state compact waste" means low-level radioactive waste generated in a party state.

(9) "Waste of international origin" means low-level radioactive waste that originates outside of the United States or a territory of the United States, including waste subsequently stored or processed in the United States.

SECTION 2. Section 401.207, Health and Safety Code, is amended to read as follows:

Sec. 401.207. OUT-OF-STATE WASTE; NONPARTY COMPACT WASTE.

(a) 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.

(b) The compact waste disposal facility license holder may accept for disposal at the compact waste disposal facility approved nonparty compact waste that is classified as Class A, Class B, or Class C low-level radioactive waste in accordance with the compact

waste disposal facility license to the extent the acceptance does not diminish the disposal volume or curie capacity available to party states. The license holder may not accept any nonparty compact waste for disposal at the facility until the license has been modified by the commission to specifically authorize the disposal of nonparty compact waste.

(c) The compact waste disposal facility license holder may not accept waste of international origin for disposal at the facility.

(d) The compact waste disposal facility license holder may not accept for disposal at the compact waste disposal facility nonparty compact waste that does not meet the waste characteristics and waste forms for disposal applicable to compact waste as set forth by the commission in the compact waste disposal facility license. Before the license holder may accept nonparty compact waste for disposal, the commission must certify through a written evaluation that the waste is authorized for disposal under the license. If the disposal is not authorized under the license, the commission must inform the license holder of the license amendments necessary to authorize the disposal.

(e) The compact waste disposal facility license holder may not accept more than 50,000 total cubic feet of nonparty compact waste annually. The compact waste disposal facility license holder may not accept more than 120,000 curies of nonparty compact waste annually, except that in the first year the license holder may accept 220,000 curies. The legislature by general law may

establish revised limits after considering the results of the study under Section 401.208.

(e-1) The commission's executive director, on completion of the study under Section 401.208, may prohibit the license holder from accepting any additional nonparty compact waste if the commission determines from the study that the capacity of the facility will be limited, regardless of whether the limit under Subsection (f) has been reached.

(f) Of the total initial licensed capacity of the compact waste disposal facility:

(1) not more than 30 percent of the volume and curie capacity shall be for nonparty compact waste; and

(2) of the remaining capacity, not less than 80 percent of the volume and curie capacity shall be for compact waste generated in the host state and 20 percent of the volume and curie capacity shall be for compact waste generated in Vermont.

(g) The commission shall assess a surcharge for the disposal of nonparty compact waste at the compact waste disposal facility. The surcharge is 20 percent of the total contracted rate under Section 401.2456 and must be assessed in addition to the total contracted rate under that section.

(h) A surcharge collected under Subsection (g) shall be deposited to the credit of the low-level radioactive waste fund.

(h-1) The commission shall conduct a study of the surcharge described by Subsection (g) and, not later than December 1, 2016, shall issue the results of the review to the legislature. The

commission shall review the operations and expenses of the compact waste disposal facility license holder and shall require the compact waste disposal facility license holder to provide justification of disposal expenses and historical costs associated with the facility through appropriate evidentiary and empirical records, studies, and other applicable methodologies. The commission shall consider the impact of the surcharge on the overall revenue generated for the state and may request the assistance of the comptroller in conducting the analysis of the impact of the surcharge.

(i) The Texas Low-Level Radioactive Waste Disposal Compact Commission by rule shall adopt procedures and forms for the approval of the importation of nonparty compact waste.

(j) An application for the approval of the importation of nonparty compact waste may be submitted to the Texas Low-Level Radioactive Waste Disposal Compact Commission only by the generator of the waste.

(k) The commission, in coordination with the Texas Low-Level Radioactive Waste Disposal Compact Commission, shall adopt rules establishing criteria and thresholds by which incidental commingling of party state compact waste and waste from other sources at a commercial processing facility is considered and reasonably limited. The criteria and thresholds for commingling under this subsection established by commission rule are binding on any criteria and thresholds that may be established by the Texas Low-Level Radioactive Waste Disposal Compact Commission.

SECTION 3. Subchapter F, Chapter 401, Health and Safety Code, is amended by adding Sections 401.208 and 401.2085 to read as follows:

Sec. 401.208. STUDY OF CAPACITY. (a) The commission shall conduct a study on the available volume and curie capacity of the compact waste disposal facility for the disposal of party state compact waste and nonparty compact waste.

(b) The commission shall consider and make recommendations regarding:

(1) the future volume and curie capacity needs of party state and nonparty state generators and any additional reserved capacity necessary to meet those needs;

(2) the calculation of radioactive decay related to the compact waste disposal facility and radiation dose assessments based on the curie capacity;

(3) the necessity of containerization of the waste;

(4) the effects of the projected volume and radioactivity of the waste on the health and safety of the public;
and

(5) the costs and benefits of volume reduction and stabilized waste forms.

(c) Not later than December 1, 2012, the commission shall submit a final report of the results of the study to the standing committees of the senate and the house of representatives with jurisdiction over the disposal of low-level radioactive waste.

(d) The Texas Low-Level Radioactive Waste Disposal Compact

Commission shall use the study to anticipate the future capacity needs of the compact waste disposal facility.

(e) The commission may conduct a study described by Subsection (a) at any time after December 1, 2012, if the commission determines that a study is necessary.

Sec. 401.2085. REVIEW OF FINANCIAL ASSURANCE. (a) The commission shall conduct a review of the adequacy of the financial assurance mechanisms of the compact waste disposal facility license holder that were approved by the commission before January 1, 2011, against projected post-closure costs, including a review of the adequacy of funds for unplanned events. The review shall consider:

(1) the segregation of financial assurance funds from other funds;

(2) the degree of risk that the financial instruments are subject to financial reversal;

(3) potential post-closure risks associated with the compact waste disposal facility; and

(4) the adequacy of the financial instruments to cover the state's liabilities.

(b) Not later than December 1, 2012, the commission shall submit a final report of the results of the review to the standing committees of the senate and the house of representatives with jurisdiction over the disposal of low-level radioactive waste.

SECTION 4. The heading to Section 401.245, Health and Safety Code, is amended to read as follows:

Sec. 401.245. PARTY STATE COMPACT WASTE DISPOSAL FEES.

SECTION 5. Section 401.245, Health and Safety Code, is amended by amending Subsections (a) and (b) and adding Subsections (g) and (h) to read as follows:

(a) A compact waste disposal facility license holder who receives party state compact [~~low level radioactive~~] waste for disposal pursuant to the compact [~~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 party state compact [~~low level radioactive~~] waste to the compact waste disposal facility for disposal.

(b) The commission by rule shall adopt and periodically revise party state compact waste disposal fees under this section 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.

(g) For the purposes of a contested case involving the adoption of fees under this section, only a party state generator of low-level radioactive waste may be considered a person affected.

(h) The administrative law judge assigned to the contested case involving the adoption of fees under this section shall issue a proposal for decision on fees proposed by the commission not later than the first anniversary of the date the State Office of Administrative Hearings assumes jurisdiction of the case.

SECTION 6. Subchapter F, Chapter 401, Health and Safety Code,

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is amended by adding Sections 401.2455 and 401.2456 to read as follows:

Sec. 401.2455. INTERIM PARTY STATE COMPACT WASTE DISPOSAL FEES. (a) The commission's executive director may establish interim party state compact waste disposal fees effective only for the period beginning on the date the compact waste disposal facility license holder is approved to accept waste at the disposal facility and ending on the effective date of the rules establishing the fees under Section 401.245. A generator is not entitled to a refund, and may not be charged a surcharge, for the disposal of waste under interim fees once the final fees have been adopted.

(b) An extension of the period during which interim rates apply may not be granted. If the State Office of Administrative Hearings has not issued a proposal for decision before the expiration of the period under Section 401.245(h), all disposal at the compact waste disposal facility must cease until the rates are adopted.

Sec. 401.2456. CONTRACTS FOR NONPARTY COMPACT WASTE DISPOSAL.

(a) At any time after the commission has granted approval to begin operating the compact waste disposal facility, the compact waste disposal facility license holder may contract rates with nonparty compact waste generators for the disposal of nonparty compact waste at the facility in accordance with the compact waste disposal facility license.

(b) Rates and contract terms negotiated under this section are subject to review and approval by the commission's executive

director to ensure they meet all of the requirements of this section.

(c) Rates negotiated under this section must be set both by a price per curie and a price per cubic foot. Fees resulting from the negotiated rates must be greater than, as applicable:

(1) the compact waste disposal fees under Section 401.245 as set by the commission that are in effect at the time the rates are negotiated; or

(2) the interim compact waste disposal fees under Section 401.2455 as set by the commission's executive director that are in effect at the time the rates are negotiated.

(d) A contract under this section must:

(1) be negotiated in good faith;

(2) conform to applicable antitrust statutes and regulations; and

(3) be nondiscriminatory.

(e) Rates set under this section must generate fees sufficient to meet the criteria for party state compact waste under Sections 401.246(a) and (c).

SECTION 7. Section 401.246, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Party state compact [~~Compact~~] waste disposal fees adopted by the commission under Section 401.245 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.

(c) In determining compact waste disposal fees, the commission shall only consider capital investment in property by the compact waste disposal facility license holder that is used and useful to the compact waste disposal facility as authorized under this chapter. The commission may not consider the capital investment costs or related costs incurred before September 1, 2003, in determining disposal fees.

SECTION 8. Subsection (b), Section 401.248, Health and Safety Code, is amended to read as follows:

(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 party state or party states to 20 percent of the annual average of low-level radioactive waste projected to be disposed of [~~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

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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.

SECTION 9. Section 401.250, Health and Safety Code, is amended to read as follows:

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. In accordance with Section 7.01 of the compact, the host state establishes the following terms and conditions for a state to become a party state to the compact after January 1, 2011:

(1) the state must make an initial payment of half of the total amount due to the host state under Subsection (b) on the later of September 1, 2011, or the date the state becomes a party state; and

(2) the state must pay the remainder of the amount owed under Subsection (b) on the later of the date of the opening of the compact waste disposal facility or the date the facility first accepts waste from the state.

(b) Each state that becomes a party state:

(1) after January 1, 2011, and before September 1, 2018, shall contribute a total of \$30 million to the host state, including the initial payment under Subsection (a)(1); and

(2) on or after September 1, 2018, and before September 1, 2023, shall contribute \$50 million to the host state, including the initial payment under Subsection (a)(1).

(c) The requirements of this section apply to a state that becomes a party state after January 1, 2011, regardless of whether the state had previously been a party to the compact. A state that has withdrawn as a party state shall pay the previously committed fee of \$25 million in addition to the fees set in Subsection (b).

(d) A payment made under this section may not be refunded, even if a party state withdraws from the compact.

(e) For the purposes of calculating the amount of a payment required under Section 4.05(5) of the compact, the amount of a payment under this section is considered to be a payment under Article V of the compact.

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

SECTION 10. Section 401.271, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c) A holder of a license or permit issued by the commission under this chapter or Chapter 361 that authorizes the storage, other than disposal, of a radioactive waste or elemental mercury from other persons shall remit each quarter to the commission for deposit into the general revenue fund an amount equal to 20 percent

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of the license or permit holder's gross receipts received from the storage of the substance for any period exceeding one year. This subsection applies only to the storage of the substance for any period exceeding one year. This subsection applies only to the storage of radioactive waste or elemental mercury at or adjacent to the compact waste disposal facility.

SECTION 11. Subsection (d), Section 401.248, Health and Safety Code, is repealed.

SECTION 12. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1504 passed the Senate on April 13, 2011, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 25, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1504 passed the House, with amendments, on May 18, 2011, by the following vote: Yeas 91, Nays 38, one present not voting.

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Chief Clerk of the House

Approved:

Date

Governor