

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Rulemaking Adoption

AGENDA REQUESTED: November 6, 2013

DATE OF REQUEST: October 18, 2013

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Charlotte Horn, (512) 239-0779

CAPTION: Docket No. 2013-0327-RUL. Consideration for adoption of new Section 336.1310 of 30 TAC Chapter 336, Radioactive Substance Rules.

The adoption of new Section 336.1310 would set out the maximum disposal rates that a licensee may charge generators for disposal of low-level radioactive waste. The maximum disposal rate would be the same as the executive director's recommended disposal rate that was part of the State Office of Administrative Hearing process. The proposed rule was published in the June 21, 2013, issue of the *Texas Register* (38 TexReg 3885). (Tonya Baer, Ron Olson) (Rule Project No. 2013-017-336-WS)

Brent Wade

Deputy Director

Charles Maguire

Division Director

Charlotte Horn

Agenda Coordinator

Copy to CCC Secretary? NO X YES

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: October 18, 2013

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

From: Brent Wade, Deputy Director
Office of Waste

Docket No.: 2013-0327-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 336, Radioactive Substance Rules
Maximum Disposal Rates
Rule Project No. 2013-017-336-WS

Background and reason(s) for the rulemaking:

Texas Health and Safety Code (THSC), §401.245, requires the commission by rule to adopt and periodically revise party state compact waste disposal fees. Senate Bill 1504 allowed the executive director (ED) to set 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.

On August 25, 2011, the ED set the interim disposal rates which remain in effect until a final maximum disposal rate schedule is adopted by rule. On February 3, 2012, after a technical review of Waste Control Specialists' (WCS) low-level radioactive waste disposal rate application, the ED published the recommended rate schedule in the *Texas Register*. These recommended disposal rates were subject to a contested case hearing if a party state generator requested one. TCEQ received several hearing requests from party-state generators of low-level radioactive waste and one hearing request from the licensee. Therefore, on May 21, 2012, TCEQ referred the rate application to the State Office of Administrative Hearings (SOAH). As part of the SOAH process, the TCEQ submitted a recommended disposal rate that differed slightly from the original interim disposal rates in that the Class A waste disposal rate was decreased from \$150 per cubic foot to \$100 per cubic foot. Subsequent to that referral, all parties withdrew from the rate case, and therefore, the case was remanded to the ED.

Under 30 Texas Administrative Code (TAC) §336.1309(g), the ED is required to initiate an expedited rulemaking to establish rates once the initial maximum disposal rates have been determined. This rulemaking would set out the maximum disposal rates.

Scope of the rulemaking:

New §336.1310 would set out the maximum disposal rates that a licensee may charge generators for disposal of low-level radioactive waste. The maximum disposal rate would be the same as the ED's recommended disposal rate that was part of the SOAH hearing process.

Re: Docket No. 2013-0327-RUL

A.) Summary of what the rulemaking will do:

New §336.1310 would set out the maximum disposal rates that a licensee may charge generators for disposal of low-level radioactive waste.

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

Federal regulations do not apply to this rulemaking. THSC, §401.245 requires the commission by rule to adopt and periodically revise party state compact waste disposal fees. Further, THSC, §401.2445 provides that the ED 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 THSC, §401.245.

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

None. This rulemaking is required in both Texas statute and TCEQ rules.

Statutory authority:

30 TAC §336.1309(g)
THSC, §401.245
THSC, §401.2455

Effect on the:

A.) Regulated community:

Both the licensee and generators of low-level radioactive waste will be affected. The disposal rates serve as a floor for rates charged by the licensee to nonparty generators and the ceiling for rates charged to party state generators for disposal of low-level radioactive waste.

B.) Public:

There is no direct impact to the public.

C.) Agency programs:

Rate fee schedule forms will need to be updated.

Stakeholder meetings:

There were no stakeholder meetings associated with this rulemaking.

Public comment:

The commission did not receive any comments regarding this rulemaking.

Significant changes from proposal:

There were no changes to this rule from proposal.

Re: Docket No. 2013-0327-RUL

Potential controversial concerns and legislative interest:

The recommended rates were discussed as part of the contested case hearing process in which generators from both Texas and Vermont and WCS participated. All parties to the contested case hearing withdrew from the case and have orally stated they expect these rates to be used in the rulemaking. Senator Kel Seliger may have an interest as he authored Senate Bill 1504, 82nd Legislature, 2011, which allowed the TCEQ to establish interim waste disposal rates until the TCEQ's final rates were adopted by rule.

Does 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?

This rulemaking is required in both Texas statute and TCEQ rules. If this rulemaking does not go forward, the TCEQ will be out of compliance with the requirements of the THSC and TCEQ regulations. There are no other alternatives to this rulemaking that will satisfy the requirements set forth in the law.

Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** June 21, 2013

Anticipated *Texas Register* adoption publication date: November 22, 2013

Anticipated effective date: November 28, 2013

Six-month *Texas Register* filing deadline: December 21, 2013

Agency contacts:

Tonya Baer, Rule Project Manager, (512) 239-1233, Radioactive Materials Division

Ron Olson, Staff Attorney, (512) 239-0608

Charlotte Horn, Texas Register Coordinator, (512) 239-0779

Attachments

None.

cc: Chief Clerk, 2 copies
Executive Director's Office
Anne Idsal
Tucker Royall
Office of General Counsel
Tonya Baer
Charlotte Horn

The Texas Commission on Environmental Quality (TCEQ, agency, commission) adopts new §336.1310.

Background and Summary of the Factual Basis for the Proposed Rule

Texas Health and Safety Code (THSC), §401.245 requires the commission by rule to adopt and periodically revise party state compact waste disposal fees. Senate Bill (SB) 1504, 82nd Legislature, 2011, allowed the executive director (ED) to set 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.

On August 25, 2011, the ED set the interim disposal rates which will remain in effect until a final maximum disposal rate schedule is adopted by rule. On February 3, 2012, after a technical review of Waste Control Specialists' (WCS) low-level radioactive waste (LLRW) disposal rate application, the ED published the recommended rate schedule in the *Texas Register* (37 TexReg 538). These recommended disposal rates were subject to a contested case hearing if a party-state generator requested one. TCEQ received several hearing requests from party-state generators of LLRW and one hearing request from the licensee. Therefore, on May 21, 2012, TCEQ referred the rate application to the State Office of Administrative Hearings (SOAH). As part of the SOAH process, the TCEQ submitted a recommended disposal rate that differed slightly from the original interim

disposal rates in that the Class A waste disposal rate was decreased from \$150 per cubic foot to \$100 per cubic foot. Subsequent to that referral, all parties withdrew from the rate case, and therefore, the case was remanded to the ED.

Under §336.1309(g), the ED is required to initiate an expedited rulemaking to establish rates once the initial maximum disposal rates have been determined. This rulemaking would add §336.1310 setting out the maximum disposal rates.

Section Discussion

§336.1310, Rate Schedule

Adopted new §336.1310 would set out the maximum disposal rates that a licensee may charge party-state generators for disposal of LLRW. Additionally, the disposal rates serve as the minimum rates that a licensee may charge to nonparty generators for disposal of LLRW.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Administrative Procedure Act. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from

environmental exposure, and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking does not meet the statutory definition of a "major environmental rule" because it is not the specific intent of the rulemaking to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed rulemaking is to implement THSC, §401.245, which requires the commission by rule to adopt and periodically revise party-state compact waste disposal fees.

Further, the rulemaking does not meet the statutory definition of a "major environmental rule" because the adopted new rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The cost of complying with the adopted new rule is not expected to be significant with respect to the economy as a whole or a sector of the economy; therefore, the adopted rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

Furthermore, the adopted rulemaking does not meet the statutory definition of a "major environmental rule" because it does not meet any of the four applicability requirements

listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) 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 adopted rulemaking does not meet the four applicability requirements, because the adopted rule: 1) does not exceed a standard set by federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program as no such federal delegation agreement exists with regard to the adopted rule; and 4) is not an adoption of a rule solely under the general powers of the commission as the adopted rule is required by THSC, §401.245.

The commission invited public comment of the draft regulatory impact analysis determination during the public comment period. The commission did not receive any comments regarding this section of the preamble.

Takings Impact Assessment

The commission evaluated this adopted rulemaking and performed an assessment of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission adopted this rulemaking for the specific purpose of implementing THSC, §401.245 and legislation enacted by the 82nd Legislature, 2011.

The proposed rulemaking creates new §336.1310. The commission's analysis revealed that creating this rule would achieve consistency with THSC, §401.245, as amended in SB 1504, 82nd Legislature, 2011. New §336.1310 would set out the maximum disposal rates that a licensee may charge party-state generators for disposal of LLRW.

A "taking" under Texas Government Code, Chapter 2007 means a governmental action that affects private real property in a manner that requires compensation to the owner under the United States or Texas Constitution, or a governmental action that affects real private property in a manner that restricts or limits the owner's right to the property and reduces the market value of affected real property by at least 25%. Because no taking of private real property would occur by establishing by rule the maximum disposal rates that a licensee may charge a party-state generator, the commission has determined that promulgation and enforcement of this adopted rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rule because the adopted rulemaking neither

relates to, nor has any impact on, the use or enjoyment of private real property, and there would be no reduction in real property value as a result of the rulemaking. Therefore, the adopted rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program.

Public Comment

The commission held a public hearing on July 19, 2013, at 10:00 a.m., Building E, Room 254S, at the commission's central office located at 12100 Park 35 Circle. One commenter, WCS, requested to speak at the hearing in support of the new rule. The commission also received a written comment from WCS stating its support of the new rule without changes.

**SUBCHAPTER N: FEES FOR LOW-LEVEL RADIOACTIVE WASTE
DISPOSAL
§336.1310**

Statutory Authority

The new section is adopted 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; and THSC, §401.245, which requires the commission, by rule, to adopt and periodically revise party-state compact waste disposal fees. The adopted new section is 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 Texas Water Code and other laws of the state.

The adopted new section implements THSC, §401.245, relating to Party-State Compact Waste Disposal Fees.

§336.1310. Rate Schedule.

Fees charged for disposal of party-state compact waste must be equal to or less than the compact waste disposal fees under this section. Additionally, fees charged for disposal of nonparty compact waste must be greater than the compact waste disposal fees under this section.

Figure: 30 TAC §336.1310

Disposal Rate for the Compact Waste Disposal Facility

1. Base Disposal Charge:

1A. Waste Volume Charge	Charge per cubic foot (\$/ft³)
Class A LLW- Routine	\$100
Class A LLW - Shielded	\$250
Class B and C LLW	\$1,000
Sources	\$500
Biological Waste (Untreated)	\$350

1B. Radioactivity Charge	
Curie Inventory Charge (\$/mCi)	\$0.55
Maximum Curie Charge (per shipment) (excluding C-14)	\$220,000 /shipment
Carbon-14 Inventory Charge (\$/mCi)	\$1.00
Special Nuclear Material Charge (\$/gram)	\$100

2. Surcharges to the Base Disposal Charge:

2A. Weight Surcharge - Weight (lbs.) of Container	Surcharge (\$/container)
10,000 to 50,000 lbs	\$10,000
Greater than 50,000 lbs	\$20,000

2B. Dose Rate Surcharge - Surface Dose Rate (R/hour) of Container	Surcharge per cubic foot (\$/ft³)
1-5 R/hour	\$100
Greater than 5 to 50 R/hour	\$200
Greater than 50 to 100 R/hour	\$300
Greater than 100 R/hour	\$400

2C. Irradiated Hardware Surcharge	
Surcharge for special handling per shipment	\$75,000 / shipment
2D. Cask (Shielding Waste) Surcharge	
Cask handling surcharge per cask	\$2,500 / cask

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



ORDER ADOPTING NEW RULES

Docket No. 2013 - 0327 - RUL

On November 6, 2013, the Texas Commission on Environmental Quality (Commission) adopted a new rule in 30 TAC Chapter 336, concerning Radioactive Substance Rules. The proposed rule was published for comment in the June 21, 2013 issue of the *Texas Register* (38 TexReg 3885).

IT IS THEREFORE ORDERED BY THE COMMISSION that the new rule is hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rule necessary to comply with *Texas Register* requirements. The adopted rule and the preamble to the adopted rule are incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Government Code, § 2001.033.

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

Issued date:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman

- (4) key health indicators; and
- ~~[(4) cultural factors affecting the health status;]~~
- ~~[(5) health problems; and]~~
- (5) ~~[(6)]~~ health resources available in the community.

(c) - (d) (No change.)

§39.4. *Provision of Contracts for Primary Health Care Services.*

(a) Primary health care services will be delivered through a network of contractors ~~[providers, directly by the department, or by the department and providers in combination. Unless otherwise necessary, eligible individuals should receive services close to their home].~~

(b) - (f) (No change.)

§39.6. *Eligibility Requirements and Provision of Services to Recipients.*

(a) Individuals covered under the Primary Health Care Services Program ~~[Aet]~~ are those who are not eligible for other benefits. Individuals eligible for prescription drug benefits under Medicare, Part D, who reside in areas of the state served by program providers that offer prescription drugs as a primary health care service may be eligible for other program services, and for prescription drugs not covered by Medicare, Part D.

(b) (No change.)

(c) In accordance with program policy, providers: ~~[In order for an individual to be eligible for primary health care services, the individual must:]~~

(1) be in financial need based on a family income that does not exceed 200% ~~[150%]~~ of the current Federal Poverty Level guidelines; and

(2) (No change.)

(d) - (h) (No change.)

§39.7. *Maintaining Eligibility.*

To maintain eligibility for program benefits, the recipient must continue to reside in Texas, be in financial need as defined by this subchapter ~~[these sections]~~, and inform the provider in writing or by telephone within 30 ~~[14]~~ days of changes in the following:

(1) - (5) (No change.)

§39.8. *Coordination of Benefits.*

(a) An individual is not eligible to receive services delivered under the Primary Health Care Services Program ~~[Aet]~~ when the individual, or a person with a legal obligation to support the individual, is eligible for some other benefit that would pay for all or part of the services, unless coverage for those services has been denied.

(b) - (c) (No change.)

§39.9. *Denial/Modification/Suspension/Termination of Services.*

The contractor ~~[department]~~ may deny, modify, suspend, or terminate services to an applicant or recipient after written notice ~~[and an opportunity for a fair hearing]~~ if:

(1) - (2) (No change.)

§39.11. *Program Review.*

(a) - (b) (No change.)

(c) The department will require providers to report information on service delivery as required by Health and Safety Code,

Chapter 31, and the Primary Health Care Services Policy Manual. ~~[to the department the following:]~~

~~[(1) demographic information on eligible individuals;]~~

~~[(2) the number of eligible individuals receiving services and the average cost per recipient;]~~

~~[(3) fiscal and financial management reports of expenditures;]~~

~~[(4) program accomplishments; and]~~

~~[(5) networking and coordination of services with other providers.]~~

~~[(d) The department may request other data and/or reports upon prior notification.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 7, 2013.

TRD-201302317

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: July 21, 2013

For further information, please call: (512) 776-6972



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

SUBCHAPTER N. FEES FOR LOW-LEVEL RADIOACTIVE WASTE DISPOSAL

30 TAC §336.1310

The Texas Commission on Environmental Quality (TCEQ, agency, commission) proposes new §336.1310.

Background and Summary of the Factual Basis for the Proposed Rule

Texas Health and Safety Code (THSC), §401.245, requires the commission by rule to adopt and periodically revise party state compact waste disposal fees. Senate Bill (SB) 1504 allowed the executive director (ED) to set 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.

On August 25, 2011, the ED set the interim disposal rates which will remain in effect until a final maximum disposal rate schedule is adopted by rule. On February 3, 2012, after a technical review of Waste Control Specialists' (WCS) low-level radioactive waste (LLRW) disposal rate application, the ED published the recommended rate schedule in the *Texas Register*. These recommended disposal rates were subject to a contested case

hearing if a party-state generator requested one. TCEQ received several hearing requests from party-state generators of LLRW and one hearing request from the licensee. Therefore, on May 21, 2012, TCEQ referred the rate application to the State Office of Administrative Hearings (SOAH). As part of the SOAH process, the TCEQ submitted a recommended disposal rate that differed slightly from the original interim disposal rates in that the Class A waste disposal rate was decreased from \$150 per cubic foot to \$100 per cubic foot. Subsequent to that referral, all parties withdrew from the rate case, and therefore the case was remanded to the ED.

Under §336.1309(g), the ED is required to initiate an expedited rulemaking to establish rates once the initial maximum disposal rates have been determined. This rulemaking would add §336.1310 setting out the maximum disposal rates.

Section Discussion

§336.1310, *Rate Schedule*

New §336.1310 would set out the maximum disposal rates that a licensee may charge party-state generators for disposal of LLRW. Additionally, the disposal rates serve as the minimum rates that a licensee may charge to nonparty generators for disposal of LLRW.

Fiscal Note: Costs to State and Local Government

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

The proposed rule would set out the maximum and minimum disposal rates that a licensee may charge generators of party-state and nonparty waste to dispose of LLRW. Disposal fees for LLRW are set to cover the cost of operating a disposal site facility, and the state has only one LLRW licensed disposal site at this time. The proposed rule complies with the provisions of SB 1504, 82nd Legislature to adopt and periodically revise compact waste disposal fees.

The licensee has already entered into six-year disposal contracts with various generators, and these generators would be required to pay the fees under their contract rates. The contract rates were based on the ED's interim disposal rates. The proposed rule would adopt rates equal to the interim disposal rates except for the rate charged for Class A LLRW disposal. Instead of the \$150 per cubic foot set under the interim rate, the proposed Class A disposal rate would be \$100 per cubic foot. The lower rate would be the base rate that would apply to generators who contract with the licensee after the proposed rule is adopted. Using the parameters of the proposed rates, the licensee would decide on the actual rates to be charged to a generator under future contracts. Contracted rates are the governing factors for state assessed fees charged on gross receipts received from the disposal of LLRW. The agency does not receive projections of future disposal volumes or gross receipts from the licensee. Current estimates of fee revenue are based on the first year of operations. The volume of Class A waste in Fiscal Year 2012 was from party-state generators and totaled 2,734.81 cubic feet. The volume of waste and, therefore, gross receipts are expected to increase in future years. Once a longer trend develops, more accurate information will be available to estimate future revenue streams.

The proposed rule is not expected to have a significant fiscal impact on the agency or the state since the rates under the proposed rule did not change for Class B and C waste which, after one year in operation, appear to be the most common waste types disposed of at the site. Any increase or decrease in fee revenue deposited in Account 88 - Low Level Radioactive Waste and Fund 001 - General Revenue will depend on actual rates charged by the licensee, and the agency does not expect rate changes for Class A waste to significantly change the amount of revenue collected.

Under current law, Andrews County receives revenue based on the licensee contracted rates. The proposed rule is not expected to have a significant effect on the amount of revenue received by Andrews County. The significance of the proposed rate change for Class A waste would depend on the contract rates established by the licensee and the volume of Class A waste compared to the volume from other classes of waste. Although the maximum rate for party state Class A waste would be \$50 per cubic foot less than the current interim rate, the licensee could charge nonparty state generators more than the minimum proposed rate so that revenue from these generators exceeds the \$50 difference between the proposed fee and the interim fee.

State agencies and other units of local government that are generators of Class A waste would pay a \$50 per cubic foot less than party-state generators operating under existing contracts. The fiscal impact of the proposed rate would depend on the rate set by the licensee and the quantity of Class A waste. Governmental entities that generate Class B and C waste would experience no fiscal implications since the rates for Class B and C waste are the same as the interim rates.

Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed new rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be in compliance with state law and clarity concerning maximum disposal rates for party-state generators and minimum disposal rates for nonparty state generators of LLRW.

The proposed rule will not have a fiscal impact on individuals and large businesses that have already contracted with the licensee for waste disposal. Their rates will remain the same for the terms of the contracts. For individual and large business generators who have not contracted with the licensee, the proposed rule is not expected to have a significant fiscal impact since most of the rates under the proposed rule are the same as the interim rates previously set by the ED. However, generators of Class A waste that do not already have contracts with the licensee and that are party-state members would see a maximum rate of \$100 per cubic foot for Class A waste instead of \$150 per cubic foot. Nonparty members would see the same rate as a minimum rate with the same potential savings. Since the licensee can charge rates that are below the maximum and above the minimum and because the agency does not receive estimates of future gross receipts from the licensee, the agency cannot provide a more accurate estimate of total fiscal impact on individuals and large businesses at this time. The significance of any savings will depend on the rates charged by the licensee and the volume of the different classes of waste disposed of by the generator.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. The proposed rule would have the same effect on a small business as it does on

a large business. The proposed rule sets LLRW disposal rates equal to that set by the ED's interim rates except for a Class A rate that is \$50 less per cubic foot. The amount of any savings for disposal of Class A waste would depend on the rate set by the licensee.

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 rule does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule 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 rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is 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 Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Administrative Procedure Act. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking does not meet the statutory definition of a "major environmental rule" because it is not the specific intent of the rulemaking to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed rulemaking is to implement legislative changes enacted by SB 1504, which require the commission by rule to adopt and periodically revise party-state compact waste disposal fees.

Further, the rulemaking does not meet the statutory definition of a "major environmental rule" because the proposed new rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The cost of complying with the proposed new rule is not expected to be significant with respect to the economy as a whole or a sector of the economy; therefore, the proposed rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

Furthermore, the proposed rulemaking does not meet the statutory definition of a "major environmental rule" because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). This section 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 meet the four applicability requirements, because

the proposed rule: 1) does not exceed a standard set by federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program as no such federal delegation agreement exists with regard to the proposed rule; and 4) is not an adoption of a rule solely under the general powers of the commission as the proposed rule is required by SB 1504.

The commission invites public comment of the draft regulatory impact analysis determination. Written comments may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed an assessment of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission proposed this rulemaking for the specific purpose of implementing legislation enacted by the 82nd Legislature in 2011. The proposed rulemaking creates new §336.1310. The commission's analysis revealed that creating this rule would achieve consistency with Texas Health and Safety Code, §401.245 as amended in 2011 by SB 1504. New §336.1310 would set out the maximum disposal rates that a licensee may charge party-state generators for disposal of LLRW.

A "taking" under Texas Government Code, Chapter 2007 means a governmental action that affects private real property in a manner that requires compensation to the owner under the United States or Texas Constitution, or a governmental action that affects real private property in a manner that restricts or limits the owner's right to the property and reduces the market value of affected real property by at least 25%. Because no taking of private real property would occur by establishing by rule the maximum disposal rates that a licensee may charge a party-state generator, the commission has determined that promulgation and enforcement of this proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rule because the proposed rulemaking neither relates to, nor has any impact on, the use or enjoyment of private real property, and there would be no reduction in real property value as a result of the rulemaking. Therefore, the proposed rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on July 19, 2013, at 10:00 a.m., Building E, Room 254S, located 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 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 Charlotte Horn, 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 2013-017-336-WS. The comment period closes July 22, 2013. Copies of the proposed rule-making 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 Tonya Baer, Radioactive Materials Division, (512) 239-1233.

Statutory Authority

The new rule is 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; and THSC, §401.245, which requires the commission, by rule, to adopt and periodically revise party state compact waste disposal fees. The proposed new rule is 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 Texas Water Code and other laws of the state.

The proposed new rule implements THSC, §401.245, relating to Party State Compact Waste Disposal Fees.

§336.1310. Rate Schedule.

Fees charged for disposal of party-state compact waste must be equal to or less than the compact waste disposal fees under this section. Additionally, fees charged for disposal of nonparty compact waste must be greater than the compact waste disposal fees under this section.

Figure: 30 TAC §336.1310

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 7, 2013.

TRD-201302316

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: July 21, 2013

For further information, please call: (512) 239-0779



TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 25. MEMBERSHIP CREDIT SUBCHAPTER A. SERVICE ELIGIBLE FOR MEMBERSHIP

34 TAC §25.1

The Teacher Retirement System of Texas (TRS) proposes amendments to §25.1, concerning service eligible for TRS membership, in Chapter 25, Subchapter A of TRS' rules. Chapter 25 concerns membership credit, and Subchapter A defines employment for TRS eligibility purposes and establishes a standard for full-time employment that is eligible for membership in TRS. Section 25.1 establishes the standards for membership eligibility, which generally is employment for one-half or more of the standard full-time work load, for a period of four and one-half months or more, with pay at a rate comparable to the rate of compensation for other persons employed in similar positions.

TRS recently adopted amendments to §25.1 to address how employment in institutions of higher education that is expressed in terms of the number of courses or semester hours taught is considered in determining eligibility for TRS membership. The amendments establish the same ratio for converting semester hours or course credits to clock hours for the purpose of determining eligibility for membership as that used for the purpose of determining the number of hours worked by a retiree under the one-half time exception: two clock hours for every hour of instruction in the classroom or lab. After those amendments were adopted, staff received comments from some community college employers and adjunct faculty members who were concerned that the requirements under the Affordable Care Act to provide health benefits to employees who work 30 hours or more in conjunction with TRS' newly adopted 2-to-1 standard for converting instructional hours to clock hours could result in employers having to limit adjunct faculty to teaching fewer classes. Administrators were concerned that additional faculty would have to be hired and employees were concerned that their incomes would be reduced. TRS was asked to provide an exception to the minimum eligibility requirements for adjunct faculty members that would allow the individual to teach the equivalent of three 3-hour classes without becoming eligible for membership in TRS. The current rule proposal represents a compromise effort to provide relief to both affected employers and employees. The recently adopted amendments to §25.1 were published in the June 7, 2013, issue of the *Texas Register* (38 TexReg 3652) and were adopted with an expedited effective date of June 3, 2013 to ensure the current proposal can be considered and adopted by the start of the 2013 fall semester.

The current proposal would establish an eligibility requirement specifically for adjunct faculty and carve out a standard for membership eligibility for adjunct faculty that allows the employee to teach the equivalent of three 3-hour classes each semester without becoming membership-eligible. Under the current standard, teaching three 3-hour classes is the equivalent of working 18 clock hours ((3 x 3) x 2 = 18 clock hours). However because there is no full-time equivalent position for adjunct faculty, §25.1(e) established a 15-hour minimum threshold for membership eligibility. For adjunct faculty, the 15-hour minimum threshold limits the employee to teaching no more than two 3-hour classes to avoid membership eligibility and the benefits provided by the employer that are tied to TRS membership eligibility. The proposed amendments would effectively allow the employee to teach one additional 3-hour class without becoming eligible for membership in TRS.

Disposal Rate for the Compact Waste Disposal Facility

1. Base Disposal Charge:

1A. Waste Volume Charge	Charge per cubic foot (\$/ft3)
Class A LLW- Routine	\$100
Class A LLW - Shielded	\$250
Class B and C LLW	\$1,000
Sources	\$500
Biological Waste (Untreated)	\$350

1B. Radioactivity Charge	
Curie Inventory Charge (\$/mCi)	\$0.55
Maximum Curie Charge (per shipment) (excluding C-14)	\$220,000 /shipment
Carbon-14 Inventory Charge (\$/mCi)	\$1.00
Special Nuclear Material Charge (\$/gram)	\$100

2. Surcharges to the Base Disposal Charge:

2A. Weight Surcharge - Weight (lbs.) of Container	Surcharge (\$/container)
10,000 to 50,000 lbs	\$10,000
Greater than 50,000 lbs	\$20,000

2B. Dose Rate Surcharge - Surface Dose Rate (R/hour) of Container	Surcharge per cubic foot (\$/ft3)
1-5 R/hour	\$100
Greater than 5 to 50 R/hour	\$200
Greater than 50 to 100 R/hour	\$300
Greater than 100 R/hour	\$400

2C. Irradiated Hardware Surcharge	
Surcharge for special handling per shipment	\$75,000 / shipment

2D. Cask (Shielding Waste) Surcharge	
Cask handling surcharge per cask	\$2,500 / cask