

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Proposed Rulemaking

AGENDA REQUESTED: October 22, 2014

DATE OF REQUEST: October 3, 2014

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Kris Hogan, (512) 239-6812

CAPTION: Docket No. 2014-1080-RUL. Consideration for publication of, and hearing on, proposed amended Section 336.1310 of 30 TAC Chapter 336, Radioactive Substance Rules.

Proposed amended Section 336.1310 would reduce the maximum disposal rate that a licensee may charge generators for disposal of “Class A Low Level Waste – Shielded”. (Bobby Janecka, Ron Olson) (Rule Project No. 2014-031-336-WS)

Ashley Forbes *for* Brent Wade

Deputy Director

Charles Maquire

Division Director

Kristina M. Hogan

Agenda Coordinator

Copy to CCC Secretary? NO X YES

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** October 3, 2014

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: Brent Wade, Deputy Director
Office of Waste

Docket No.: 2014-1080-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 336, Radioactive Substance Rules
Maximum Disposal Rates
Rule Project No. 2014-031-336-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. On November 6, 2013, the Texas Commission on Environmental Quality (TCEQ or commission) adopted the maximum disposal rates by rule in 30 Texas Administrative Code (TAC) §336.1310.

On June 19, 2014, Waste Control Specialists (WCS) submitted a volume adjustment request to the commission to calculate the annual volume adjustment to the low-level radioactive waste (LLRW) disposal rates charged at the Compact Waste Disposal Facility in Andrews County, Texas. WCS' volume adjustment proposes to reduce the disposal rate for Class A Low-Level Waste (LLW) – Shielded from \$250 per cubic foot to \$180 per cubic foot. After a review of WCS' request, staff agrees that this change in rate is necessary in order to reflect material changes to the volume of waste expected to be received at the Compact Waste Disposal Facility. Accordingly, the Executive Director (ED) initiated a rate revision to lower the maximum disposal rate for Class A LLW – Shielded to \$180 per cubic foot.

On July 18, 2014, the ED published notice of the proposed rate change in the *Texas Register*. Additionally, on July 22, 2014, WCS mailed the notice to all known customers that will ship or deliver waste to the Compact Waste Disposal Facility. The proposed rate change was subject to a contested case hearing if a party state generator requested one. TCEQ did not receive a request for a contested case hearing. Therefore, pursuant to §336.1305(g), the ED approved the reduction in rate for the Class A LLW – Shielded as an uncontested matter.

Re: Docket No. 2014-1080-RUL

THSC, §401.245 requires the commission to adopt the maximum disposal rates by rule. Therefore, an expedited rulemaking is necessary in order for this rate change to become effective and reflected in the rate schedule that was adopted by rule in §336.1310.

Scope of the rulemaking:

The proposed rulemaking would amend §336.1310 by reducing the maximum disposal rate that a licensee may charge generators for disposal of Class A LLW – Shielded.

A.) Summary of what the rulemaking will do:

The proposed rulemaking would amend §336.1310 by reducing the maximum disposal rate that a licensee may charge generators for disposal of Class A LLW – Shielded from \$250 per cubic foot to \$180 per cubic foot.

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.

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:

THSC, §401.245

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 are no proposed stakeholder meetings associated with this rulemaking; however, there will be a public hearing for this rulemaking on December 4, 2014, in Austin, Texas.

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Potential controversial concerns and legislative interest:

The notice of the maximum disposal rate change that was published in the *Texas Register* and mailed to all known customers that will ship or deliver waste to the Compact Waste Disposal Facility included an opportunity to request a contested case hearing. The TCEQ did not receive any requests for a hearing.

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?

This rulemaking is required in both Texas statute and TCEQ rules. THSC, §401.245 requires the commission to adopt the maximum disposal rates by rule. If this rulemaking does not go forward, the proposed rate change for disposal of Class A LLW – Shielded will not become effective or reflected in the rate schedule established by rule in §336.1310. There are no other alternatives to this rulemaking that will satisfy the requirements set forth in the law.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: October 22, 2014

Anticipated *Texas Register* publication date: November 7, 2014

Public hearing date (if any): December 4, 2014

Public comment period: November 7, 2014 – December 8, 2014

Anticipated adoption date: February 4, 2015

Agency contacts:

Bobby Janecka, Rule Project Manager, 239-6415, Radioactive Materials Division

Ron Olson, Staff Attorney, 239-0608

Kris Hogan, Texas Register Coordinator, 239-6812

Attachments

None.

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Tucker Royall
Pattie Burnett
Office of General Counsel
Bobby Janecka
Kris Hogan

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes an amendment to §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.

On June 19, 2014, Waste Control Specialists (WCS) submitted a volume adjustment request to the commission to calculate the annual volume adjustment to the low-level radioactive waste (LLRW) disposal rates charged at the Compact Waste Disposal Facility in Andrews County, Texas. WCS' volume adjustment proposes to reduce the disposal rate for Class A Low-Level Waste (LLW) - Shielded from \$250 per cubic foot to \$180 per cubic foot. After a review of WCS' request, staff agrees that this change in rate is necessary in order to reflect material changes to the volume of waste expected to be received at the Compact Waste Disposal Facility. Accordingly, the executive director (ED) initiated a rate revision to lower the maximum disposal rate for Class A LLW - Shielded to \$180 per cubic foot.

On July 18, 2014, the ED published notice of the proposed rate change in the *Texas Register* (39 TexReg 5635). Additionally, on July 22, 2014, WCS mailed the notice to all known customers that will ship or deliver waste to the Compact Waste Disposal Facility. The proposed rate change was subject to a contested case hearing if a party state generator

requested one. TCEQ did not receive a request for a contested case hearing. Therefore, pursuant to §336.1305(g), the ED approved the reduction in rate for the Class A LLW - Shielded as an uncontested matter.

THSC, §401.245 requires the commission to adopt the maximum disposal rates by rule. Therefore, an expedited rulemaking is necessary in order for this rate change to become effective and reflected in the rate schedule established in §336.1310. This rulemaking would amend §336.1310 by reducing the maximum disposal rate for Class A LLW - Shielded.

Section Discussion

§336.1310, Rate Schedule

The commission proposes to amend §336.1310 by reducing the maximum disposal rate that a licensee may charge party-state generators for disposal of Class A LLW - Shielded waste.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer Division, has determined that for the first five-year period the proposed rule is in effect, fiscal implications are anticipated for the state and Andrews County in the form of increased revenue collections. The anticipated increase in revenue will be deposited into the General Revenue Fund and will also be distributed to Andrews County as required by statute.

The State of Texas and the State of Vermont entered into the Low-Level Radioactive Waste Disposal Compact agreement in 2004 subsequent to the departure of the State of Maine from the compact. A private company, WCS located in Andrews County is currently licensed to operate the LLRW disposal facility. The commission by rule sets the maximum disposal rates that the licensee can assess to waste generators in the compact. During the 82nd Legislative Session (2011), the facility received authorization to accept non-compact waste (waste generated outside of Texas or Vermont). The maximum rates set by the commission also serve as the minimum rates that can be charged to non-compact generators who dispose of LLW at the site.

The proposal would amend Chapter 336, and would reduce the maximum disposal rate that the licensee may charge generators for disposal of Class A LLW - Shielded waste from \$250 per cubic foot to \$180 per cubic foot.

The reduction in the rate is necessary in order to reflect material changes to the volume of waste expected to be received at the compact waste disposal facility. The volume received in 2013 was less than the estimated amount in the licensee's rate application and the TCEQ rate schedules. In order to bring the revenue in line with the revenue target that formed the basis of the adopted rate, the "waste volume charge" for shielded Class A waste would be reduced. A reduction of that rate will increase volume of shielded Class A waste from out-of-compact generators while still leaving more than adequate capacity for in-compact

generators. As a result of the rate reduction, the facilities operator projects an additional 12,000 cubic feet of Class A LLW - Shielded waste from non-compact generators to be disposed of at the site. This potential additional waste would not be disposed of at the Andrews facility if the rates were not reduced. The proposed rates will only apply to new contracts entered into by the facility. The facility's previously agreed upon LLW disposal contracts rates will remain in place and not be impacted by the rule proposal.

Utilizing the proposed minimum of \$180 per cubic foot and applying it to the facilities projected additional 12,000 cubic feet of Class A LLW - Shielded, from non-compact generators the agency projects an additional \$540,000 will be generated for the state in additional revenue over the next five years. The agency projects that \$432,000 will be generated from the 20% surcharge on non-compact waste receipts and \$108,000 will be generated from the 5% fee assessed on the gross receipts of all waste disposed of in the Compact Waste Facility as a result of this rule change. The additional revenue will come from the compact facility operator and be deposited to the credit of the General Revenue Fund. The operator will pass along the cost to the non-compact generators who they establish disposal agreements with.

Andrews County, which is the host county for the facility, will collect an estimated \$108,000 from the 5% fee that is assessed on gross receipts of all waste disposed.

Governmental entities located in the compact states that generate Class A LLW - Shielded waste could see a decrease in contracted per cubic foot level as a result of the proposed

rule. In Fiscal Year (FY) 2014, the facility received approximately 4,200 cubic feet of Class A LLW - Shielded waste from compact generators. The TCEQ estimates that 10% of the volume of all waste disposed at the compact facility will come from academic, medical, and non-power generation sources. Many of these sources are classified as governmental entities.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rule is in effect, there is no direct public benefit anticipated from the changes seen in the proposed rule other than an increase in General Revenue Funding and an increase in funding for public projects for Andrews County. The lower rate may help to ensure that Class A LLW - Shielded waste is being properly disposed of at the compact facility and not remaining on the premises of generators.

Fiscal implications are anticipated for businesses that generate Class A LLW - Shielded waste and the operator of the compact facility. No direct fiscal implications are anticipated for individuals.

The owner or operator of a private facility located in the compact states that generate Class A LLW - Shielded waste could see a decrease in the contracted per cubic foot rate as a result of the proposed rule. Generators that are not located in the compact states will likely see a decrease in contracted per cubic foot level as a result of the proposed rule. The

proposed rates will only apply to new contracts entered into by the facility. The facilities previously agreed upon LLW disposal contracts rates will remain in place and not be impacted by the rule proposal. The additional fee of 20% and 5% surcharge revenue are deposited to the General Revenue Fund.

In FY 2014 the facility received approximately 9,000 cubic feet of Class A LLW - Shielded waste. Of the total approximated volume, 4,200 cubic feet came from compact generators and 4,800 cubic feet were from non-compact generators. The TCEQ estimates that 90% of the volume of all waste disposed at the compact facility will come from nuclear utilities generators. As a result of the reduction, the facility's operator projects an additional 12,000 cubic feet of Class A LLW - Shielded waste from non-compact generators will be disposed of at the site. The proposed rates will only apply to new contracts entered into by the facility. The facility's previously agreed upon LLW disposal contracts rates will remain in place and not be impacted by the rule proposal.

Utilizing the proposed minimum of \$180 per cubic foot and applying it to the facility's projected additional 12,000 cubic foot of Class A LLW - Shielded waste, from non-compact generators, the agency projects an additional \$2.1 million will be generated in additional revenue over the next five years, by the compact facility operator as result of this rule change. The operator will pass the additional cost along to the non-compact generators who they establish disposal contracts with. The proposed rates will only apply to new contracts entered into by the facility. The facility's previously agreed upon LLW disposal

contracts rates will remain in place and not be impacted by the rule proposal.

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 amount of any savings for disposal of Class A LLW - Shielded 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 is a component of the state's plan to protect the environment and reduce risks to human health from environmental exposure to air pollutants; and the proposed rule does not adversely affect a small or micro-businesses 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 rule amendment to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed rulemaking is to amend the LLRW maximum disposal rate that a licensee may charge for disposal of Class A LLW - Shielded waste.

Further, the rulemaking does not meet the statutory definition of a "major environmental rule" because the proposed 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 amendment 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 amendment: (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 amendment is required by THSC, §401.245.

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 amending the LLRW maximum disposal rate that a licensee may charge for disposal of Class A LLW - Shielded waste. The proposed rulemaking amends §336.1310. The commission's analysis revealed that amending this rule section would achieve consistency with THSC, §401.245. Amended §336.1310 would reduce the maximum rate that a licensee may charge a party state generator for disposal of Class A LLW - Shielded waste.

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 amending the maximum disposal rate that a licensee may charge a party state generator for disposal of Class A LLW - Shielded waste, 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.

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 on December 4, 2014, at 10:00 a.m. in Austin, Texas, 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 Kris Hogan, 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 2014-031-336-WS. The comment period closes on December 8, 2014.

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 Bobby Janecka, Radioactive Materials Division, (512) 239-6415 or Ron Olson, Environmental Law Division, (512) 239-0608.

SUBCHAPTER N: FEES FOR LOW-LEVEL RADIOACTIVE WASTE DISPOSAL

§336.1310

Statutory Authority

The amendment is proposed under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401, §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 amendment 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 TWC, and other laws of the state.

The proposed amendment implements THSC, §401.245.

§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 (\$/ft ³)
Class A LLW - Routine	\$100
Class A LLW - Shielded	<u>\$180</u> [\$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 (\$/ft ³)
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