

# **Texas Commission on Environmental Quality**

## **Interoffice Memorandum**

**To:** Commissioners **Date:** April 27, 2012

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

**From:** Brent Wade, Deputy Director  
Office of Waste

**Docket No.:** 2011-1905-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
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 Facility 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, 82nd Legislature, 2011, 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 (TLLRWDC), but any criteria and thresholds established by the commission rule are binding on any criteria and thresholds established by the TLLRWDC.

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 (TCEQ) in separate actions.

### **Scope of the rulemaking:**

#### **A.) Summary of what the rulemaking will do:**

The rulemaking adds new definitions in §336.702 of "commercial processing," "commingling," "incidental," "party state compact waste," "waste from other sources," and "waste of international origin."

The rulemaking for §336.745 implements THSC, §401.207(k) to limit the disposal of LLRW that contains party state compact waste that has been commingled at a commercial processing facility, as provided in §336.745. The applicability subsection in §336.745(a) explains that the commingling limitations of compact party state waste with waste from other sources does not

prohibit the commingling of compact party state waste with waste from different in-Compact generators and also recognizes that the comingled nonparty waste can be subject to the terms of an agreement of the TLLRWDC for the importation of LLRW into the compact for disposal. Section 336.745(b) limits the disposal of LLRW that contains party state compact waste that has been comingled at a commercial processing facility with waste from other sources only as authorized in §336.745. Under §336.745(c), the comingled waste from other sources must meet the thresholds and criteria established in §336.745(g). Section 336.745(d) prohibits the disposal of comingled waste unless the comingling 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 comingling, under §336.745(e), the licensee of the Compact Waste Disposal Facility 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 radioactivity of the processed waste. There must be a certification whether party state compact waste has been comingled with waste from other sources, that it has not been comingled, either intentionally or unintentionally, with waste of international origin, and that it has not been intentionally comingled with nonparty compact waste. There must also be certification that the processed waste meets the requirements of §336.229 and that sealed sources have not been destroyed or damaged to alter the physical form of the sealed source as part of processing. If party state compact waste has been comingled with waste from other sources, the report must identify waste streams as they enter and exit a specific process at a commercial processing facility, and certify that the comingling of the waste was incidental to the processing of the party state compact waste. The comingling threshold and criteria have been established by §336.745(g) by waste stream, specifically Class A LLRW for Dry Active Waste (DAW) and for Nuclear Utility Resin, and for Class B and C LLRW which is either Nuclear Utility Resin or Nuclear Utility Filter waste.

The 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:**

None.

**Statutory authority:**

THSC, §401.207, Out-of-State Waste

THSC, §401.011, Radiation Control Agency

THSC, §401.051, Adoption of Rules and Guidelines

THSC, §401.103, Rules and Guidelines for Licensing and Registration

THSC, §401.104, Licensing and Registration Rules

THSC, §401.412, Commission Licensing Authority  
**Effect on the:**

**A.) Regulated community:**

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:**

A public hearing on the rules was held on January 12, 2012. The commission received comments from Waste Control Specialist (WCS), EnergySolutions, Studsvik, Advocates for Responsible Disposal in Texas (ARDT), Entergy Services, Inc. representing Vermont Yankee, Cox, Smith, Matthews (CSM) representing the South Texas Project Nuclear Operating Company, Luminant Power, which owns and operates Comanche Peak Nuclear Power Plant, the Sustainable Energy and Economic Development (SEED) Coalition, and Robert Singleton representing himself. The commission has been working in coordination with the TLLRWDC on this rulemaking through an appointed TLLRWDC Rules Committee. Comments have been received and discussed with the TLLRWDC as part of the commission's coordination efforts.

**Public comment:**

The comment period closed on January 23, 2012. The commission received written comments from WCS, EnergySolutions, Studsvik, ARDT, Entergy Services, Inc. representing Vermont Yankee, CSM, the Southeast Compact Commission, the SEED Coalition, and the Texas Radiation Advisory Board.

The majority of the comments received suggested that the limitation to 5% by radioactivity of waste from other sources should either be increased to a higher percentage, by volume or mass instead of radioactivity, be dependent on the processing technique, and/or be based on pre-processing data. Some comments stated that the 5% radioactivity limit should be reduced to 1% and one comment stated that 5% by radioactivity was good. Other comments were to allow the commingling of compact party state waste and LLRW that is subject to an agreement of the TLLRWDC for the importation of LLRW into the compact for disposal from different generators. Other comments concerned certification of processors and certification of how the waste was processed, changes in

some of the definitions, exemptions from the commingling limits for certain types of waste, the prevention of commingling of international waste with domestic waste, changes in the reporting requirements, the inclusion of a discussion concerning sealed sources, defining when a radioactive substance becomes a waste, and grandfather clauses for preexisting contracts between generators and processor.

**Significant changes from proposal:**

The definitions of commingling in §336.702(6) was changed from listing waste processes to "any process" based on a comment from WCS. A new §336.745(a) was added to clarify that compact party state waste from different generators can be commingled and that LLRW subject to an agreement of the TLLRWDC for the importation of LLRW into the compact for disposal from different generators can be commingled based on comments from ARDT, TLLRWDC and CSM. Additional certification requirements by the licensee and the processor were added for processed waste to certify that no party state compact waste has been commingled, either intentionally or unintentionally, with waste of international origin based on comments from the SEED Coalition and to certify that no party state compact waste has been intentionally commingled with nonparty compact waste based on comments from the SEED Coalition. A new requirement was added for the licensee and the processor to certify that the processed waste meets the requirements of §336.229 based on comments from WCS and ARDT and that sealed sources have not been destroyed or damaged to alter the physical form of the sealed source as part of processing based on comments from the TLLRWDC and TRAB. Section 336.745 was modified to change the commingling limit from 5% by radioactivity for all waste to specific limits for different types of waste streams. Different limits of the amount of waste from other sources are established for different waste streams by volume, radioactivity, or weight. Waste from other sources may not exceed: 0.05 µCi per gram or 10% of Class A LLRW limit for Dry Active Waste, Nuclear Utility Resin, and Nuclear Utility Filter waste, and 10% by volume and radioactivity for Class B and C LLRW which is either Nuclear Utility Resin or Nuclear Utility Filters based on comments from ARDT, Entergy Services, EnergySolutions, the Southeast Compact Commission, Studsvik and CSM. For waste streams not identified in §336.745(e), the waste from other sources may not exceed 10% by volume, weight, radioactivity, or concentrations limits. The time that the report required in §336.745 is due was changed from ten days to five days in response to a comment from WCS.

**Potential controversial concerns and legislative interest:**

Comments demonstrated a wide divergence of opinion on the originally proposed 5% radioactivity commingling limit. Some comments wanted the limit more strict by having it be 1% by radioactivity, one agreed with the 5% limit, and other comments stated that this limit was unrealistic and wanted it changed to either a higher percentage of radioactivity, be based on volume, or be based on waste type and processing technique. The commingling limits were revised based on comments.

**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?**

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

**Key points in the adoption rulemaking schedule:**

***Texas Register* proposal publication date:** December 23, 2011  
**Anticipated *Texas Register* adoption publication date:** June 1, 2012  
**Anticipated effective date:** June 7, 2012  
**Six-month *Texas Register* filing deadline:** June 25, 2012

**Agency contacts:**

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Tonya Baer, IGR Liaison, 239-1233, Intergovernmental Relations  
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**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  
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