

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:**

<b>1A. Waste Volume Charge</b>	<b>Charge per cubic foot (\$/ft<sup>3</sup>)</b>
Class A LLW- Routine	\$100
Class A LLW - Shielded	\$250
Class B and C LLW	\$1,000
Sources	\$500
Biological Waste (Untreated)	\$350

<b>1B. Radioactivity Charge</b>	
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:**

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

<b>2B. Dose Rate Surcharge - Surface Dose Rate (R/hour) of Container</b>	<b>Surcharge per cubic foot (\$/ft<sup>3</sup>)</b>
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

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