

# Texas Commission on Environmental Quality

## Interoffice Memorandum

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

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

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

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

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

### **Background and reason(s) for the rulemaking:**

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

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

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

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

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

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

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

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

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

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

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

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

**Statutory authority:**

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

**Effect on the:**

**A.) Regulated community:**

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

**B.) Public:**

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

**C.) Agency programs:**

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

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

**Stakeholder meetings:**

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

**Potential controversial concerns and legislative interest:**

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

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

No.

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

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

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

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

**Agency contacts:**

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**Attachments**

Senate Bill 1504

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Susana M. Hildebrand, P.E.  
Anne Idsal  
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Office of General Counsel  
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