

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** May 17, 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 Proposed Rulemaking
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:

Proposed 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.

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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 executive director 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:

None held.

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 the subject of rulemaking.

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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. 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 proposal rulemaking schedule:

Anticipated proposal date: June 5, 2013

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

Public hearing date (if any): July 19, 2013

Public comment period: June 21, 2013 - July 22, 2013

Anticipated adoption date: November 6, 2013

Agency contacts:

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Ron Olson, Staff Attorney, 239-0608

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Attachments

None.

cc: Chief Clerk, 2 copies
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