The Texas Commission on Environmental Quality (TCEQ, agency, commission) proposes 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 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*. 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

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.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government as a result of administration or enforcement of the proposed rule.

The proposed rule would set out the maximum and minimum disposal rates that a

licensee may charge generators of party-state and nonparty waste to dispose of LLRW. Disposal fees for LLRW are set to cover the cost of operating a disposal site facility, and the state has only one LLRW licensed disposal site at this time. The proposed rule complies with the provisions of SB 1504, 82nd Legislature to adopt and periodically revise compact waste disposal fees.

The licensee has already entered into six-year disposal contracts with various generators, and these generators would be required to pay the fees under their contract rates. The contract rates were based on the ED's interim disposal rates. The proposed rule would adopt rates equal to the interim disposal rates except for the rate charged for Class A LLRW disposal. Instead of the $150 per cubic foot set under the interim rate, the proposed Class A disposal rate would be $100 per cubic foot. The lower rate would be the base rate that would apply to generators who contract with the licensee after the proposed rule is adopted. Using the parameters of the proposed rates, the licensee would decide on the actual rates to be charged to a generator under future contracts. Contracted rates are the governing factors for state assessed fees charged on gross receipts received from the disposal of LLRW. The agency does not receive projections of future disposal volumes or gross receipts from the licensee. Current estimates of fee revenue are based on the first year of operations. The volume of Class A waste in Fiscal Year 2012 was from party-state generators and totaled 2,734.81 cubic feet. The volume of waste and, therefore, gross receipts are expected to increase in future years. Once a

longer trend develops, more accurate information will be available to estimate future revenue streams.

The proposed rule is not expected to have a significant fiscal impact on the agency or the state since the rates under the proposed rule did not change for Class B and C waste which, after one year in operation, appear to be the most common waste types disposed of at the site. Any increase or decrease in fee revenue deposited in Account 88 - Low Level Radioactive Waste and Fund 001 - General Revenue will depend on actual rates charged by the licensee, and the agency does not expect rate changes for Class A waste to significantly change the amount of revenue collected.

Under current law, Andrews County receives revenue based on the licensee contracted rates. The proposed rule is not expected to have a significant effect on the amount of revenue received by Andrews County. The significance of the proposed rate change for Class A waste would depend on the contract rates established by the licensee and the volume of Class A waste compared to the volume from other classes of waste. Although the maximum rate for party state Class A waste would be $50 per cubic foot less than the current interim rate, the licensee could charge nonparty state generators more than the minimum proposed rate so that revenue from these generators exceeds the $50 difference between the proposed fee and the interim fee.

State agencies and other units of local government that are generators of Class A waste would pay a $50 per cubic foot less than party-state generators operating under existing contracts. The fiscal impact of the proposed rate would depend on the rate set by the licensee and the quantity of Class A waste. Governmental entities that generate Class B and C waste would experience no fiscal implications since the rates for Class B and C waste are the same as the interim rates.

Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed new rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be in compliance with state law and clarity concerning maximum disposal rates for party-state generators and minimum disposal rates for nonparty state generators of LLRW.

The proposed rule will not have a fiscal impact on individuals and large businesses that have already contracted with the licensee for waste disposal. Their rates will remain the same for the terms of the contracts. For individual and large business generators who have not contracted with the licensee, the proposed rule is not expected to have a significant fiscal impact since most of the rates under the proposed rule are the same as the interim rates previously set by the ED. However, generators of Class A waste that do not already have contracts with the licensee and that are party-state members would see

a maximum rate of $100 per cubic foot for Class A waste instead of $150 per cubic foot. Nonparty members would see the same rate as a minimum rate with the same potential savings. Since the licensee can charge rates that are below the maximum and above the minimum and because the agency does not receive estimates of future gross receipts from the licensee, the agency cannot provide a more accurate estimate of total fiscal impact on individuals and large businesses at this time. The significance of any savings will depend on the rates charged by the licensee and the volume of the different classes of waste disposed of by the generator.

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 proposed rule sets LLRW disposal rates equal to that set by the ED's interim rates except for a Class A rate that is $50 less per cubic foot. The amount of any savings for disposal of Class A 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 does not adversely affect a small or micro-business 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 rulemaking to protect the environment or

reduce risks to human health from environmental exposure. The specific intent of the proposed rulemaking is to implement legislative changes enacted by SB 1504, which require 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 proposed 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 proposed new rule 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 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 proposed rule; and 4) is not an adoption of a rule solely under the general powers of the commission as the proposed rule is required by SB 1504.

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 implementing legislation enacted by the 82nd Legislature in 2011. The proposed rulemaking creates new §336.1310. The commission's analysis revealed that creating

this rule would achieve consistency with Texas Health and Safety Code, §401.245 as amended in 2011 by SB 1504. 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 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.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on July 19, 2013, at 10:00 a.m., Building E, Room 201S, located 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 Charlotte Horn, 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 2013-017-336-WS. The comment period closes July 22, 2013. 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 Tonya Baer, Radioactive Materials Division, (512) 239-1233.

SUBCHAPTER N: FEES FOR LOW-LEVEL RADIOACTIVE WASTE DISPOSAL
§336.1310

Statutory Authority

The new rule is proposed 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 proposed new rule 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 proposed new rule 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:

1A. Waste Volume Charge	Charge per cubic foot ($/ft3)
Class A LLW- Routine	$100
Class A LLW - Shielded	$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 ($/ft3)
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