

**SUBCHAPTER N: FEES FOR LOW-LEVEL RADIOACTIVE WASTE DISPOSAL**  
**§§336.1301, 336.1303, 336.1305, 336.1307, 336.1309, 336.1311, 336.1313, 336.1315, 336.1317**  
**Effective March 12, 2009**

**§336.1301. Purpose and Scope.**

(a) State and national policy directs that the management of low-level radioactive waste be accomplished by a system of interstate compacts and the development of regional disposal sites. Under federal law, Texas is responsible for managing the low-level radioactive waste generated within its borders. The Texas Low-Level Radioactive Waste Disposal Compact, comprised of the states of Texas and Vermont, has as its disposal facility the compact waste disposal facility licensed under Subchapter H of this chapter (relating to Licensing Requirements Near-Surface Land Disposal of Low-Level Radioactive Waste). The compact waste disposal facility is expected to be the sole facility for disposal of low-level radioactive waste for generators within the states of Texas and Vermont.

(b) Low-level radioactive waste is generated by essential activities and services that benefit the citizens of the state. For the Compact Waste Facility Disposal, the price of disposing of low-level radioactive waste at the Texas low-level radioactive waste disposal site will be determined by the commission. To protect Texas and Vermont compact states' businesses and services, such as electrical production, medical and university research, and private industries, upon which the public relies, the commission will establish the maximum disposal rates charged by the licensee in accordance with the rules in this subchapter.

(c) A licensee who receives low-level radioactive waste for disposal pursuant to the Texas Low-Level Radioactive Waste Disposal Compact established under Texas Health and Safety Code, Chapter 403 shall collect a fee to be paid by each person who delivers low-level radioactive waste to the compact waste disposal facility for disposal. This fee shall be based on the commission approved maximum disposal rate, as specified in this subchapter.

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**§336.1303. Definitions.**

Terms used in this subchapter are defined in §336.2 of this title (relating to Definitions). Additional terms used in this subchapter have the following definitions.

(1) **Allowable expenses**--Only those expenses which are reasonable and necessary to provide service to the public shall be included in allowable expenses. Allowable expenses to the extent they are reasonable and necessary, may include but are not limited to the following general categories:

(A) operation and maintenance expense incurred in providing normal compact waste disposal facility services and in maintaining compact waste disposal facility used and useful to the licensee in providing such services. Payments to affiliated interests shall be allowed as described in §336.1317 of this title (relating to Consideration of Payment to Affiliate);

(B) expense to meet future costs of decommissioning, closing, and post closure maintenance and surveillance of the compact waste disposal facility;

(C) depreciation expense based on original cost and computed on a straight-line basis as approved by the commission. Other methods of depreciation may be used when it is determined that such depreciation methodology is a more equitable means of recovering the cost of the facility;

(D) assessments and taxes other than income taxes;

(E) federal income tax on a normalized basis;

(F) expenses for advertising, contributions, and donations may be allowed as a cost of service provided that the total sum of all such items allowed in the cost of service shall not exceed three-tenths of one percent (0.3%) maximum of the gross receipts; and

(G) accruals credited to reserve accounts for self-insurance under a plan requested by a licensee and approved by the commission. The commission shall consider approval of a self-insurance plan in a rate case in which expenses or rate base treatments are requested for such a plan. For the purposes of this section, a self-insurance plan is a plan providing for accruals to be credited to reserve accounts. The reserve accounts are to be charged with property and liability losses which occur, and which could not have been reasonably anticipated and included in operating and maintenance expenses, and are not paid or reimbursed by commercial insurance. The commission will approve a self-insurance plan to the extent it finds it to be in the public interest.

(2) **Compact**--The Texas Low-Level Radioactive Waste Disposal Compact established under Texas Health and Safety Code, §403.006 and Texas Low-Level Radioactive Waste Disposal Compact Consent Act, Public Law Number 105-236 (1998).

(3) **Compact waste**--Low-level radioactive waste that:

(A) is generated in a host state or a party state; or

(B) is not generated in a host state or a party state, but has been approved for importation to this state by the compact commission under §3.05 of the Texas Low-Level Radioactive Waste Disposal Compact established under Texas Health and Safety Code, §403.006.

(4) **Compact waste disposal facility**--The low-level radioactive waste land disposal facility licensed by the commission under Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) for the disposal of compact waste.

(5) **Extraordinary volume**--Volumes of low-level radioactive waste delivered to a site caused by nonrecurring events, outside normal operations of a generator, that are in excess of 20,000 cubic feet or 20% of the preceding year's total volume at such site, whichever is less.

(6) **Extraordinary volume adjustment**--A mechanism that allocates the potential rate reduction benefits of an extraordinary volume between all generators and the generator responsible for

such extraordinary volume as described in §336.1313 of this title (relating to Extraordinary Volume Adjustment).

(7) **Generator**--A person, partnership, association, corporation, or any other entity whatsoever that, as a part of its activities, produces low-level radioactive waste and is subject to the Compact.

(8) **Gross receipts**--Includes, with respect to an entity or affiliated members, owners, shareholders, or limited or general partners, all receipts from the entity's disposal operations in Texas licensed under this chapter including any bonus, commission, or similar payment received by the entity from a customer, contractor, subcontractor, or other person doing business with the entity or affiliated members, owners, shareholders, or limited or general partners. This term does not include receipts from the entity's operations in Texas, or affiliated members, owners, shareholders, or limited or general partners, for capital reimbursements, bona fide storage, treatment, and processing, and federal or state taxes or fees on waste received uniquely required to meet the specifications of a license or contract.

(9) **Inflation adjustment**--A mechanism that adjusts the maximum disposal rate by a percentage equal to the change in price levels in the preceding period. The adjustment shall be made using an inflation factor derived from the most recent annual Implicit Price Deflator for Gross National Product published by the United States Department of Commerce in its Survey of Current Business.

(10) **Invested capital**--The original cost, less accumulated depreciation, of property used by and useful to the licensee in providing service. The original cost of property shall be determined at the time the property is dedicated to public use, whether by the licensee that is the present owner or by a predecessor. In this subchapter, "original cost" means the actual money cost, or the actual money value of any consideration paid other than money.

(11) **Licensee**--The holder of the license authorizing the compact waste disposal facility license issued by the commission under this chapter.

(12) **Maximum disposal rate**--The rate described in §336.1311 of this title (relating to Revisions to Maximum Disposal Rates).

(13) **Reasonable rate of return**--The return on invested capital based on calculations of revenue and operating costs on an after-tax basis which may include the following applicable factors:

- (A) the efforts and achievements of the licensee in conserving resources;
- (B) the quality of the licensee's services;
- (C) the efficiency of the licensee's operations; and
- (D) the quality of the licensee's management.

(14) **Relative hazard** --The properties of a waste stream for disposal that may present a particular hazard or danger for safe management based on the radioactivity in curies and dose rate as well as special handling requirements due to size, shape, or configuration.

(15) **Revenue requirement**--Based on a formula which is the invested capital multiplied by the rate of return on invested capital , plus the allowable expenses , where all amounts are only those used and useful for the compact facility.

(16) **Volume adjustment**--A mechanism that adjusts the maximum disposal rate in response to material changes in volumes of waste deposited at the site during the preceding period so as to provide a level of total revenues sufficient to recover the costs to operate and maintain the site.

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**§336.1305. Commission Powers.**

(a) The commission shall establish rates to be charged by the licensee. In establishing the rates, the commission shall ensure that they are fair, just, reasonable, and sufficient considering the value of the licensee's real property and license interests, the unique nature of its business operations, the licensee's liability associated with the site, its investment incurred over the term of its operations, and the reasonable rate of return equivalent to that earned by comparable enterprises.

(b) The commission may use any standard, formula, method, or theory of valuation reasonably calculated to arrive at the objective of prescribing and authorizing fair, just, reasonable, and sufficient rates.

(c) In any proceeding involving an initial or a change of rate, the burden of proof shall be on the licensee to show that the proposed rate, if proposed by the licensee, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable. In any other matters or proceedings, the burden of proof is on the moving party.

(d) The commission may refer a request for a contested case hearing to the State Office of Administrative Hearings on the establishment of a rate under this subchapter.

(e) The commission may audit a licensee's financial records and waste manifest information to ensure that the fees imposed under this chapter are accurately charged and paid. The licensee shall comply with the commission's audit-related requests for information.

(1) To achieve the purposes, proper administration, and enforcement of this chapter, the executive director may conduct audits or investigations of waste disposal rates, payments and fees authorized by Texas Health and Safety Code, Chapter 401, and the veracity of information submitted to the commission.

(2) Each person subject to or involved with an audit or investigation under subsection (a) of this section shall cooperate fully with the audit or investigation by the executive director.

(f) After consideration of initial rate application or revision, the commission shall establish, by rule, the maximum disposal rate and schedule.

(g) The authority to establish the rates under this subchapter may be delegated to the executive director if the application is not contested.

(h) Initiation of rate revision by the executive director.

(1) If good cause exists, the executive director may initiate revisions to the maximum disposal rates established under this subchapter which may include a true-up proceeding, subject to notice and opportunity for a contested case hearing. No revision to the maximum disposal rate is final until approved in the commission's rules establishing the maximum disposal rate. Good cause includes, but is not limited to:

(A) there are material and substantial changes in the information used to establish the maximum disposal rates ;

(B) information, not available at the time the maximum rates were established, is received by the executive director, justifying a rate revision; or

(C) the rules or statutes on which the maximum disposal rates were based have been changed by statute, rule, or judicial decision after the establishment of the maximum disposal rates .

(2) One or more generators may petition the executive director to initiate a revision to the maximum disposal rate under the requirements of this subsection. The generator must provide a copy of the petition to the licensee at the time the petition is submitted to the executive director. The executive shall grant or deny the petition within 90 days of filing, or request more information from the petitioner. The executive director's decision on a petition filed under this paragraph is subject to a motion to overturn filed with the commission under Chapter 50 of this title (relating to Actions on Applications and Other Authorizations).

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### **§336.1307. Factors Considered for Maximum Disposal Rates.**

Maximum disposal rates adopted by the commission shall consider the following factors and be sufficient to:

(1) allow the licensee to recover allowable expenses. Allowable expenses shall never include: legislative advocacy expenses; political expenditures or contributions; expenses in support of or promoting political movements, or political or religious causes; funds expended for membership in or support of social, fraternal, or religious clubs or organizations; costs, including interest expense, of processing a refund or credit ordered by the commission; or any expenditure found by the commission to be unreasonable, unnecessary or against public interest, including but not limited to, executive salaries, legal expenses, penalties, fines, or costs not used or useful for the provision of compact waste disposal finality services;

(2) provide an amount to fund local public projects under Texas Health and Safety Code, §401.244;

(3) provide a reasonable opportunity to earn a reasonable rate of return on invested capital in the facilities used for management, disposal, processing, or treatment of compact waste at the compact waste disposal facility, which rate of return is expressed as a percentage of invested capital. In addition to the factors set forth in §336.1303(13) of this title (relating to Definitions), the rate of return should be reasonably sufficient to assure confidence in the financial soundness of the licensee and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low because of changes affecting opportunities for investment, the money market, and business conditions generally. The commission may, in addition, consider inflation, deflation, and the need for the licensee to attract new capital. The rate of return must be high enough to attract new capital but need not go beyond that. In each case, the commission shall consider the licensee's cost of capital, which is the weighted average of the costs of the various classes of capital used by the licensee:

(A) Debt capital. The cost of debt capital is the actual cost of the debt at the time of issuance, plus adjustments for premiums, discounts, and refunding and issuance costs.

(B) Equity capital. For companies with ownership expressed in terms of shares of stock, equity capital commonly consists of the following classes of stock:

(i) Common stock capital. The cost of common stock capital shall be based upon a fair return on its market value; or

(ii) Preferred stock capital. The cost of preferred stock capital is the actual cost of preferred stock at the time of issuance, plus an adjustment for premiums, discounts and refunding and issuance costs; and

(4) provide an amount necessary to pay compact waste disposal facility licensing fees, to pay compact waste disposal facility fees set by rule or statute, to provide financial assurance for the compact waste disposal facility as required by the commission under law and commission rules, and to reimburse the commission for the salary and other expenses of two or more resident inspectors employed by the commission pursuant to Texas Health and Safety Code, §401.206.

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### **§336.1309. Initial Determination of Rates and Fees.**

(a) The licensee shall file an application with the executive director to establish initial maximum disposal rates that consider the factors identified in §336.1307 of this title (relating to Factors Considered for Maximum Disposal Rates). The application shall include exhibits, workpapers, summaries, annual reports, cost studies, a proposed reasonable rate of return on invested capital, proposed fees, and other information as requested by the executive director to demonstrate rates that meet the requirements of this subchapter. In addition, the application shall include revenue requirements for cost recovery from the compact waste disposal facility.

(1) The licensee shall submit a rate filing application package in accordance with the application prescribed by the executive director.

(2) After receipt of the application, the executive director shall review the application and recommend one or more rates to the commission for approval. In reviewing the application and evaluating the rate information, the executive director may request additional information from the licensee.

(3) The licensee shall provide notice of the application to all known customers that will ship or deliver waste to the compact waste disposal facility and shall provide notice of the application to any person by any method as directed by the executive director.

(4) The executive director shall maintain a Web site to inform the public on the process for consideration of the rate application and shall provide notice by publication in the *Texas Register*.

(b) After notice and the opportunity for a contested case hearing, the commission shall establish the initial maximum disposal rates that may be charged by the licensee. Upon request for a contested case hearing by a waste generator in the Texas Compact, the executive director shall directly refer an application to establish maximum disposal rates to the State Office of Administrative Hearings for a contested case hearing. Only the executive director, the licensee, or a generator has a right to a contested case hearing.

(c) A request for a contested case hearing filed by a generator shall contain the following information for each signatory generator:

(1) a clear and concise statement that the application is a request for a contested case hearing; and

(2) the generator's licensing numbers indicating the location or locations where the compact waste is generated.

(d) Generators must initiate a request for a contested case hearing by filing individual requests rather than joint requests.

(e) In the initial rate proceeding, the commission also shall determine the factors necessary to calculate the inflation adjustment, volume adjustment, extraordinary volume adjustment, and relative hazard.

(f) Initial rates shall be interim rates subject to a true-up in the first revision to maximum disposal rates pursuant to §336.1311 of this title (relating to Revisions to Maximum Disposal Rates). The true-up will measure the differences between projected and actual volumes of cubic feet of waste, allowable expenses, and invested capital for the time period that the interim rates are in effect, based on actual, historical amounts during that time period. The licensee shall refund to the generators who paid interim rates where money collected under the interim rates that is in excess of the adopted rates; or the licensee shall surcharge bills to the generators who paid interim rates to recover the amount by which the money collected under interim rates is less than the money that would have been collected under adopted rates.

(g) After determining the initial maximum disposal rates, inflation adjustment, and volume adjustment under this subchapter, the commission shall direct the executive director to initiate expedited rulemaking to establish the rate by rule.

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**§336.1311. Revisions to Maximum Disposal Rates.**

(a) The maximum disposal rates that a licensee may charge generators shall be determined in accordance with this section, and §336.1307 of this title (relating to Factors Considered for Maximum Disposal Rates). The rates shall include all charges for disposal services at the site.

(b) Initially, the maximum disposal rates shall be the initial rates established pursuant to §336.1309 of this title (relating to Initial Determination of Rates and Fees).

(c) Subsequently, the maximum disposal rates shall be adjusted in January of each year to incorporate inflation adjustments and volume adjustments. Such adjustments shall take effect unless the commission authorizes that the adjustments take effect according to an alternate schedule.

(d) The licensee may also file an application for revisions to the maximum disposal rates due to:

(1) changes in any governmentally imposed fee, surcharge, or tax assessed on a volume or a gross receipts basis against or collected by the licensee, including site closure fees, perpetual care and maintenance fees, business and occupation taxes, site surveillance fees, commission regulatory fees, taxes, and a tax or payment in lieu of taxes authorized by the state to compensate the county in which a site is located for that county's legitimate costs arising out of the presence of that site within that county;

(2) factors outside the control of the licensee such as a material change in regulatory requirements regarding the physical operation of the site; or

(3) changes in the licensee's revenue requirements or in any of the other factors in §336.1307 of this title that necessitate a change in the licensee's maximum disposal rates.

(e) For revisions to maximum disposal rates, the application must meet the requirements in §336.1309(a) and (b) of this title. In computing allowable expenses for revisions to maximum disposal rates, only the licensee's test year expenses as adjusted for known and measurable changes will be considered.

(f) For any revisions to the maximum disposal rates, including inflation and volume adjustments, the licensee shall provide notice to its customers concurrent with the filing as consistent with §336.1309(a)(3) of this title.

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**§336.1313. Extraordinary Volume Adjustment.**

(a) In establishing the extraordinary volume adjustment, unless the licensee and generator of the extraordinary volume agree to a contract disposal rate, one-half of the extraordinary volume delivery shall be priced at the maximum disposal rate and one-half shall be priced at the licensee's incremental cost to receive the delivery. Such incremental cost shall be determined in the initial rate proceeding.

(b) For purposes of the subsequent calculation of the volume adjustment, one-half of the total extraordinary volume shall be included in the calculation.

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**§336.1315. Revenue Statements and Consideration of Payment to Affiliate.**

(a) The licensee shall, on or before April 1st of each year, file with the commission:

(1) an audited financial statement showing its gross receipts for the preceding calendar year;

(2) a statement in a form prescribed by the executive director reflecting the licensee's revenues and allowable expenses for the previous calendar year from its low-level radioactive waste disposal activities; and

(3) a validation of payments made in §336.103(f) and (g) of this title (relating to Schedule of Fees for Subchapter H Licenses) must also be included.

(b) The financial statement as specified in subsection (a) of this section shall be prepared in accordance with Generally Accepted Accounting Principles and audited by a Certified Public Accounting (CPA) firm. The audited financial statement shall include an Auditor's Report from the CPA indicating an "unqualified" opinion of the licensee's financial statements.

(c) In addition to the financial statement on gross receipts, the licensee shall provide an audited cost statement that provides all investment and operating costs for the preceding calendar year.

(d) In addition to information submitted under this section, all revenues and costs shall be provided by the licensee upon request by the executive director to consider revision of rates under §336.1305(c) of this title (relating to Commission Powers.)

(e) Except as provided by subsection (f) of this section, the commission may not allow as capital cost or as allowable expenses a payment to an affiliate for:

(1) the cost of service, property, right, or other item; or

(2) interest expense.

(f) The commission may allow a payment described by subsection (e) of this section only to the extent that the commission finds the payment is reasonable and necessary for each item or class of items as determined by the commission.

(g) A finding under subsection (f) of this section must include:

(1) a specific finding of the reasonableness and necessity of each item or class of items allowed; and

(2) a finding that the price charged to the licensee is not higher than the prices charged by the supplying affiliate for the same item or class of items to:

(A) its other affiliates or divisions; or

(B) a nonaffiliated person within the same market area or having the same market conditions.

(h) In making a finding regarding an affiliate transaction, the commission shall:

(1) determine the extent to which the conditions and circumstances of that transaction are reasonably comparable relative to quantity, terms, date of contract, and place of delivery; and

(2) allow for appropriate differences based on that determination.

(i) If the commission finds that an affiliate expense for the test period is unreasonable, the commission shall:

(1) determine the reasonable level of the expense; and

(2) include that expense in determining the licensee's cost of service.

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**§336.1317. Contracted Disposal Rates.**

(a) At any time, a licensee may contract with any person to provide a contract disposal rate that is lower than the maximum disposal rate.

(b) A contract or contract amendment shall be submitted to the executive director for approval at least 30 days before its effective date. If the executive director takes no action within 30 days of filing, the contract or amendment shall go into effect according to its terms. Each contract filing shall be accompanied with documentation to show that the contract does not result in unreasonable discrimination between generators receiving like and contemporaneous service under substantially similar circumstances and provides for the recovery of all costs associated with the provision of the service.

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