

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Proposed Rulemaking

AGENDA REQUESTED: November 1, 2017

DATE OF REQUEST: October 13, 2017

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Sherry L. Davis, (512) 239-2141

CAPTION: Docket No. 2017-0894-RUL. Consideration for publication of, and hearing on, a proposed amendment to Section 336.103 of 30 TAC Chapter 336, Radioactive Substance Rules.

The proposed rulemaking would implement House Bill 2662, 85th Texas Legislature, 2017, Regular Session, to repeal the 5% gross receipts fee on all compact and federal waste disposal for the biennium beginning September 1, 2017. (Hans Weger, Amie Robinson) (Rule Project No. 2017-032-336-WS)

Brent Wade
Deputy Director

Robert Janecka for Charles Maguire
Division Director

Sherry L. Davis
Agenda Coordinator

Copy to CCC Secretary? NO X YES

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** October 13, 2017

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: Brent Wade, Deputy Director
Office of Waste

Docket No.: 2017-0894-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 336, Radioactive Substance Rules
HB 2662: LLRW Compact Disposal Facility Fees
Rule Project No. 2017-032-336-WS

Background and reason(s) for the rulemaking:

House Bill (HB) 2662, 85th Texas Legislature, 2017, repeals the 5% gross receipts fee on all compact and federal waste disposal for the biennium beginning September 1, 2017. The 5% fee is deposited into the State's General Revenue. In Fiscal Years (FYs) 2015 and 2016, the agency collected \$4.3 million in revenue from the 5% surcharge. The revenue is anticipated to return to the current level once the fee is re-established on September 1, 2019. The bill was effective immediately.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do: The rulemaking will repeal the 5% gross receipts fee in 30 TAC §336.103.

B.) Scope required by federal regulations or state statutes: HB 2662 requires the repeal of the 5% gross receipts fee.

C.) Additional staff recommendations that are not required by federal rule or state statute: None.

Statutory authority:

Texas Health and Safety Code (THSC), Chapter 401; THSC §§401.011, 401.051, 401.103(b), 401.104, 401.201, and 401.2445; and Texas Water Code §5.103.

Effect on the:

A.) Regulated community: An estimated reduction of \$4.3 million in fees for the FY 2018 - FY 2019 biennium.

B.) Public: None are anticipated.

C.) Agency programs: None are anticipated.

Re: Docket No. 2017-0894-RUL

Stakeholder meetings:

No stakeholder meetings are planned; however, a public hearing will be held during the comment period.

Potential controversial concerns and legislative interest:

None are anticipated.

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? Without rulemaking, Chapter 336 would be inconsistent with the legislative mandate.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: November 1, 2017

Anticipated *Texas Register* publication date: November 17, 2017

Anticipated public hearing date: December 12, 2017

Anticipated public comment period: November 17, 2017 - December 22, 2017

Anticipated adoption date: April 2018.

Agency contacts:

Hans Weger, Rule Project Manager, Radioactive Materials Unit, (512) 239-6465

Amie Robinson, Staff Attorney, (512) 239-2999

Kris Hogan, Texas Register Rule/Agenda Coordinator, (512) 239-6812

Attachments:

HB 2662

cc: Chief Clerk, 2 copies
Executive Director's Office
Erin Chancellor
Stephen Tatum
Jim Rizk
Office of General Counsel
Hans Weger
Kris Hogan
Amie Robinson

AN ACT

relating to the Texas Low-Level Radioactive Waste Disposal Compact waste disposal facility; reducing a surcharge; eliminating a fee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. (a) Section 401.207(g), Health and Safety Code, is amended to read as follows:

(g) The commission shall assess a surcharge for the disposal of nonparty compact waste at the compact waste disposal facility. The surcharge is 10 [~~20~~] percent of the total contracted rate under Section 401.2456 and must be assessed in addition to the total contracted rate under that section.

(b) Effective September 1, 2019, Section 401.207(g), Health and Safety Code, is amended to read as follows:

(g) The commission shall assess a surcharge for the disposal of nonparty compact waste at the compact waste disposal facility. The surcharge is 20 percent of the total contracted rate under Section 401.2456 and must be assessed in addition to the total contracted rate under that section.

SECTION 2. Section 401.208, Health and Safety Code, is amended by amending Subsections (a), (c), and (e) and adding Subsection (a-1) to read as follows:

(a) At least once every four years, the [~~The~~] commission shall conduct a study on the available volume and curie capacity of the compact waste disposal facility for the disposal of party state

1 compact waste and nonparty compact waste.

2 (a-1) In order to conduct the study under this section, the
3 commission may require a generator of low-level radioactive waste
4 to provide annually:

5 (1) information reasonably necessary to evaluate the
6 adequacy of the capacity of the compact waste disposal facility as
7 accurately as possible, including the amount in volume and curies
8 that the generator intends to export or dispose of at a facility
9 other than the compact waste disposal facility;

10 (2) the amount in volume and curies of low-level
11 radioactive waste that was stored on-site at the generator's
12 facility in the preceding year; and

13 (3) the length of time waste was stored at the
14 generator's facility.

15 (c) The [~~Not later than December 1, 2016, the~~] commission
16 shall submit a final report of the results of the study to the
17 standing committees of the senate and the house of representatives
18 with jurisdiction over the disposal of low-level radioactive waste.

19 (e) The commission may conduct a study described by
20 Subsection (a) at any time [~~after December 1, 2012,~~] if the
21 commission determines that a study is necessary.

22 SECTION 3. (a) Section 401.2445, Health and Safety Code, is
23 repealed.

24 (b) Effective September 1, 2019, Subchapter F, Chapter 401,
25 Health and Safety Code, is amended by adding Section 401.2445 to
26 read as follows:

27 Sec. 401.2445. STATE FEE. The compact waste disposal

1 facility license holder each quarter shall transfer to the state
2 general revenue fund five percent of the gross receipts from:

3 (1) compact waste received at the compact waste
4 disposal facility; and

5 (2) any federal facility waste received at a federal
6 facility waste disposal facility licensed under Section 401.216.

7 SECTION 4. Chapter 403, Health and Safety Code, is amended
8 by adding Section 403.0056 to read as follows:

9 Sec. 403.0056. ASSESSMENT OF COMPACT FACILITY BY
10 LEGISLATIVE OVERSIGHT COMMITTEE. (a) In this section, "compact
11 facility" has the meaning assigned by the Texas Low-Level
12 Radioactive Waste Disposal Compact.

13 (b) A legislative oversight committee is created for the
14 purpose of assessing the compact facility.

15 (c) The committee is composed of the following members:

16 (1) the chair of the House Committee on Environmental
17 Regulation;

18 (2) a member of the house of representatives who
19 represents the county in which the compact facility is located;

20 (3) a member of the house of representatives appointed
21 by the speaker of the house of representatives;

22 (4) the chair of the Senate Committee on Natural
23 Resources and Economic Development;

24 (5) a member of the senate who represents the county in
25 which the compact facility is located;

26 (6) a member of the senate appointed by the lieutenant
27 governor;

1 (7) the chair of the commission; and

2 (8) a person appointed by each nonhost party state as
3 provided by the laws of that state.

4 (d) The chair of the House Committee on Environmental
5 Regulation and the chair of the Senate Committee on Natural
6 Resources and Economic Development shall serve as co-chairs.

7 (e) An appointed member of the committee serves at the
8 pleasure of the appointing official.

9 (f) The committee shall consider and make recommendations
10 regarding:

11 (1) the annual fixed costs incurred by the operator of
12 the compact facility;

13 (2) the party state compact waste disposal fees
14 established in rule by the Texas Commission on Environmental
15 Quality in accordance with Section [401.245](#);

16 (3) the contract review process as carried out by the
17 Texas Commission on Environmental Quality;

18 (4) the relationship between the state, party state
19 generators, and operator as it relates to the operation of the
20 compact facility;

21 (5) the contingency plan required under the Texas
22 Low-Level Radioactive Waste Disposal Compact;

23 (6) the need for and effects of fees and surcharges
24 assessed for disposal of waste in the compact facility, including
25 the fees and surcharges assessed under the following sections:

26 (A) Section [401.052](#)(b)(5);

27 (B) Section [401.207](#)(g);

1 (C) Section 401.245; and

2 (D) Section 401.246(a)(6);

3 (7) the cost of a state-run compact facility and the
4 effect a state-run facility would have on rates and generators in
5 compact states; and

6 (8) any other matters the committee determines are
7 relevant to the compact facility and oversight of the compact
8 facility.

9 (g) The committee may request reports and other information
10 from the commission and the Texas Commission on Environmental
11 Quality as necessary to carry out this section.

12 (h) Not later than December 1, 2018, the committee shall
13 submit a final report of the results of the assessment to the
14 committees of the senate and the house of representatives with
15 jurisdiction over the disposal of low-level radioactive waste.

16 (i) The committee is abolished and this section expires
17 December 31, 2018.

18 SECTION 5. The Texas Commission on Environmental Quality
19 shall submit the first report required under Section 401.208,
20 Health and Safety Code, as amended by this Act, not later than
21 December 1, 2020.

22 SECTION 6. This Act takes effect immediately if it receives
23 a vote of two-thirds of all the members elected to each house, as
24 provided by Section 39, Article III, Texas Constitution. If this
25 Act does not receive the vote necessary for immediate effect, this
26 Act takes effect September 1, 2017.

President of the Senate

Speaker of the House

I certify that H.B. No. 2662 was passed by the House on May 6, 2017, by the following vote: Yeas 127, Nays 7, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2662 on May 24, 2017, by the following vote: Yeas 137, Nays 5, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2662 was passed by the Senate, with amendments, on May 23, 2017, by the following vote: Yeas 28, Nays 3.

Secretary of the Senate

APPROVED: _____

Date

Governor

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes an amendment to §336.103.

Background and Summary of the Factual Basis for the Proposed Rule

House Bill (HB or bill) 2662, 85th Texas Legislature, 2017, repeals the 5% gross receipts fee on all compact and federal waste disposal for the biennium beginning September 1, 2017. The 5% fee is deposited into the State's General Revenue. In Fiscal Years (FYs) 2015 and 2016, the agency collected \$4.3 million in revenue from the 5% surcharge. The revenue is anticipated to return to the current level once the fee is re-established on September 1, 2019. The bill was effective immediately.

Section Discussion

The proposed rule will remove the 5% gross receipts fee in §336.103(f). Subsection (f) is proposed to be removed and subsection (g) is proposed to be re-lettered accordingly.

Fiscal Note: Costs to State and Local Government

Maribel Montalvo, analyst in the Chief Financial Officer Division, determined that for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency and no fiscal implications are expected for units of local government as a result of the administration or enforcement of the proposed rule. Fiscal implications are anticipated for the State of Texas as there would be a two-year loss of revenue for the General Revenue Account which is used to fund

state government operations. These fiscal implications are not expected to be significant.

The proposed rule would implement portions of HB 2662. HB 2662 repeals the 5% gross receipts fee on all compact and federal waste disposed at the Texas Low Level Radioactive Waste facility for the biennium beginning September 1, 2017. HB 2662 reinstates the 5% gross receipts fee beginning September 1, 2019. Revenue from the 5% gross receipts fee has been deposited into the state's General Revenue Fund. For FYs 2015 and 2016, the agency collected and deposited to the General Revenue Fund approximately \$4.3 million (approximately \$2.15 million each year) in revenue from the 5% surcharge. The revenue is anticipated to return to this level again once the fee is re-established on September 1, 2019.

Public Benefits and Costs

Ms. Montalvo also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated, from the changes in the proposed rule, will be compliance with state law.

No fiscal implications are anticipated for individuals as a result of the implementation or administration of the proposed rule. The proposed rule is expected to result in cost savings for party state and nonparty state compact as well as federal waste generators who use the Texas Low Level Radioactive Waste facility for disposal. Cost savings could

be expected for generators located both inside and outside the State of Texas. These generators will see a reduction in fees assessed to them for the disposal of low-level radioactive waste totaling approximately \$2.1 million each year until September 1, 2019. The fee reduction may result in attracting more waste generators to use the facility for waste disposal.

Local Employment Impact Statement

The commission 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.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that a rural community impact statement is not required because the proposed rule does not adversely affect a rural community in a material way for the first five years that the proposed rule is in effect.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect. The proposed rule is expected to result in cost savings

for compact and federal waste generators who use the Texas Low Level Radioactive Waste facility for disposal. None of these generators are thought to be small or micro-businesses, but if they are, these generators will see a reduction in fees for the disposal of low-level waste at the compact facility until September 1, 2019.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule does not adversely affect small or micro-businesses for the first five-year period the proposed rule is in effect and is required by state law.

Government Growth Impact Statement

The commission reviewed this proposed rulemaking and determined that a Government Growth Impact Statement Assessment is not required because the proposed rule is required by state law.

Draft Regulatory Impact Analysis Determination

The commission proposes the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action 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 statute. A "major environmental rule" means a rule, the specific intent of which, is to protect the

environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendment to Chapter 336 is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because these revisions are required for TCEQ to comply with legislation requiring a two-year suspension of this fee for the biennium beginning September 1, 2017.

Furthermore, the proposed rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, 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 action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency.

Written comments on the Draft Regulatory Impact Analysis Determination 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 a preliminary assessment of whether the proposed rulemaking constitutes a taking under the Private Real Property Rights Preservation Act, Texas Government Code, Chapter 2007. The proposed rule does not affect a landowner's rights in private real property because this rulemaking action does not constitutionally burden, restrict, or limit the owner's right to property nor reduce the value of an owner's property by 25% or more. Therefore, promulgation and enforcement of this proposed rulemaking would be neither a statutory nor a constitutional taking of private real property in accordance with Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found 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.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 12, 2017, at 10:00 a.m., in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle in Austin. 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 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, 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://www1.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 2017-032-336-WS. The comment period closes on December 22, 2017. Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Hans Weger, Radioactive Materials Unit, (512) 239-6465.

SUBCHAPTER B: RADIOACTIVE SUBSTANCE FEES

§336.103

Statutory Authority

The 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; THSC, §401.051, which provides for the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103(b), which requires the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which provides for general and specific licensing by rule with a few exceptions; THSC, §401.201, which requires the commission to directly regulate the disposal of low-level radioactive waste; and THSC, §401.2445, which requires a disposal facility license holder to transfer a percentage of gross receipts to the state general revenue fund. The proposed rule is also authorized by Texas Water Code (TWC), §5.103 which provides the commission with the authority to adopt rules necessary to carry out its power and duties under the TWC and other laws of the state.

The proposed amendment will implement House Bill 2662, 85th Texas Legislature, 2017, which removes the 5% gross receipts fee on all compact and federal waste disposal for the biennium beginning September 1, 2017.

§336.103. Schedule of Fees for Subchapter H Licenses.

(a) An application for a low-level radioactive waste disposal site license under Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) shall be accompanied by a nonrefundable application processing fee of \$500,000. If the commission's costs in processing an application under Subchapter H of this chapter exceed the \$500,000 application processing fee, the commission may assess and collect additional fees from the applicant to recover the costs. Recoverable costs include costs incurred by the commission for administrative review, technical review, and hearings associated with the application.

(b) An applicant shall submit an annual fee for the actual costs incurred by the commission for hearings associated with an application for a low-level radioactive waste disposal site under Subchapter H of this chapter. The executive director shall send an invoice for the amount of the costs incurred during the period September 1 through August 31 of each year. Payment shall be made within 30 days following the date of the invoice.

(c) A holder of a license for a low-level radioactive waste disposal site issued under Subchapter H of this chapter shall submit an annual license fee for the services received. This fee shall recover for the state the actual expenses arising from the regulatory activities associated with the license. This fee shall include reimbursement

for the salary and other expenses of the resident inspectors as provided by §336.743 of this title (relating to Resident Inspector). The executive director shall invoice for the amount of the costs incurred. Payment shall be made within 30 days following the date of the invoice.

(d) An application for a major amendment of a license issued under Subchapter H of this chapter must be accompanied by an application fee of \$50,000.

(e) An application for renewal of a license issued under Subchapter H of this chapter must be accompanied by an application fee of \$300,000.

[f) The compact waste disposal facility license holder shall remit to the commission 5% of the gross receipts from compact waste received at the compact waste disposal facility and any federal facility waste received at the federal facility waste disposal facility. Payment shall be made within 30 days of the end of each quarter. The end of each quarter is the last day of the months of November, February, May, and August.]

(f) [(g)] The compact waste disposal facility license holder shall remit directly to the host county 5% of the gross receipts from compact waste received at the compact waste disposal facility and any federal facility waste received at the federal facility waste disposal facility as required in Texas Health and Safety Code, §401.244. Payment

shall be made within 30 days of the end of each quarter. The end of each quarter is the last day of the months of November, February, May, and August.