

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**  
for Rulemaking Adoption

**AGENDA REQUESTED:** November 03, 2021

**DATE OF REQUEST:** October 15, 2021

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Cecilia Mena, Rule/Agenda Coordinator, (512) 239-6098

**CAPTION: Docket No. 2020-0032-RUL.** Consideration of the adoption of amendments to 30 TAC Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste, Section 335.323 and Section 335.325.

The rulemaking adoption will establish increases to the industrial and hazardous waste (IHW) generator fee schedule and the IHW management fee schedule. The proposed rules were published in the June 4, 2021, issue of the *Texas Register* (46 TexReg 3499). (Garrett Heathman, Audrey Liter, Jessie Spears; Rule Project No. 2020-010-335-WS)



---

**Director**



---

**Division Deputy Director**

Cecilia Mena

---

**Agenda Coordinator**

Copy to CCC Secretary? NO ☐ YES ☒

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** October 15, 2021

**Thru:** Laurie Gharis, Chief Clerk  
Toby Baker, Executive Director

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

**Docket No.:** 2020-0032-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste  
IHW Generator and Management Fees Increase  
Rule Project No. 2020-010-335-WS

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

Revisions to the industrial and hazardous waste (IHW) generator and management fee rules are needed to increase revenue into the Waste Management Account, Fund 0549. Fund 0549 is facing a declining fund balance and these fee rates have not been adjusted since 1994.

**Scope of the rulemaking:**

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

This rulemaking adoption will increase the fees for generation and management of IHW. Additionally, it will give the executive director the ability to adjust the fees on an annual basis at or below the new adopted fee schedules.

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

Not applicable.

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

- 30 Texas Administrative Code (TAC) §335.325, to increase the IHW management fee schedule by 45% and to allow the executive director the ability to adjust the actual IHW management fee at or below the new fee schedule amounts. The executive director anticipates phasing in the fee increase over smaller increments and highlighting the declining Fund 549 balance during the 2023 Legislative Session. The executive director projects a 12% increase during the first year and 11% for the subsequent three years. The executive director will evaluate the fund balance and projected revenue each fiscal year to determine if these fee increases are necessary.

Per Texas Health and Safety Code (THSC), §361.133(d), the Texas Commission on Environmental Quality (agency or commission) may collect up to \$16 million per year for this fee. Based on current disposal amounts, a 45% increase phased in over four years will result in an estimated revenue close to, but below, the \$16 million cap.

Re: Docket No. 2020-0032-RUL

Granting the executive director the ability to adjust the fee will allow the program area to evaluate yearly trends in disposal amounts and adjust the fee, at or below the maximums in the new fee schedule, to keep the total revenue close to the \$16 million cap.

- 30 TAC §335.323, to increase the IHW generation fee schedule from \$0.50 to a maximum of \$2.00 per ton for nonhazardous waste generation, increase the IHW generation fee schedule from \$2.00 to a maximum of \$6.00 per ton for hazardous waste generation, and allow the executive director the ability to adjust the actual IHW generator fee at or below the new fee schedule amounts. The executive director anticipates phasing in the fee increase over four years and highlighting the declining Fund 549 balance during the 2023 Legislative Session. The executive director will evaluate the fund balance and projected revenue each fiscal year to determine if these fee increases are necessary.

THSC, §361.134(c) has a statutory minimum of \$50 and a maximum of \$50,000 for hazardous waste generation and \$10,000 for nonhazardous waste generation.

The adopted fee schedule changes will allow the agency to equitably collect fees for waste processing and disposal across the waste program activities.

**Statutory authority:**

The rulemaking is adopted under the authority of THSC, §361.024, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under the Texas Solid Waste Disposal Act; THSC, §361.017, which establishes the commission's jurisdiction over all aspects of the management of industrial solid waste and hazardous municipal waste with all power necessary or convenient to carry out the responsibilities of that jurisdiction; THSC, §361.134, which authorizes the commission to collect an annual generation fee from each generator who produces Class I industrial solid waste or hazardous waste; THSC, §361.136, which authorizes the commission to collect a fee on industrial solid waste and hazardous waste managed at a facility; and Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties.

**Effect on the:**

**A.) Regulated community:**

This rulemaking adoption will increase fees for generation and management of waste by the regulated entities, which may alter generation and disposal amounts or methods. The mid-range of fee payers represent about 45% of the regulated community.

**B.) Public:**

Although there is no anticipated direct impact to the public, the public may experience increased fees for waste generation or passed through price increases due to increased fees on waste management. There could be a small environmental benefit from waste generation reductions.

Re: Docket No. 2020-0032-RUL

**C.) Agency programs:**

An increase to the fees will positively affect the agency's waste programs dependent on Fund 0549.

**Stakeholder meetings:**

A stakeholder meeting was held prior to the separation of the fee increase portion from the Resource Conservation and Recovery Act Rulemaking - Phase 2 cluster (Rule Project No. 2019-086-335-WS). No comments were received in response to the fee increase portion.

**Public comment:**

The commission held a virtual public hearing on June 29, 2021. The comment period closed on Tuesday, July 06, 2021. The commission received written comments from Corteva Agriscience, Day Enterprises, LLC, Heritage Environmental Services, LLC, Texas Molecular Holdings, LLC, and US Ecology. One of the comments was in support of the proposed rule revisions, three of the comments were against the proposed rule revisions, one comment was neither in support of nor against the proposed rule revisions, and all the comments suggested changes. The comment letter from Texas Molecular Holdings, LLC, was postmarked July 6, 2021 and received on July 9, 2021.

Comments focused on the following topics: a phased implementation of the fee increases over a period of years; increases to statutory limits; increase to municipal solid waste disposal fees in statute; competitiveness with other states' fee structures; additional stakeholder involvement; advanced notification of fee changes; clarifications for language relating to tables and figures; and clarification for the amount of increase to generation fees.

In response to comments about a phased implementation of the fee increases over a period of years, the executive director will phase in both fee increases incrementally over four years as described above. This will not require a change in rule.

**Significant changes from proposal:**

There were no significant rule changes made; however, rule language regarding notification of fee adjustments was added, and the titles of the figures in §335.323 and §335.325 were revised to increase clarity and consistency.

**Potential controversial concerns and legislative interest:**

It is anticipated that due to the adopted fee increase the rulemaking may generate public interest; however, the fee has not been increased since 1994.

The increase in waste generation fees could provide generators an incentive to reduce their waste generation as a cost saving. While such reduction in waste generation would benefit human health and the environment, there is a possibility that revenue might not increase as much as anticipated due to lower waste generation amounts.

Re: Docket No. 2020-0032-RUL

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

This rulemaking adoption will not affect current policies or require development of new policies.

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

The alternative is to not increase fees and continue to maintain a budget deficit in Fund 0549.

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

*Texas Register* proposal publication date: June 4, 2021

Anticipated *Texas Register* adoption publication date: November 19, 2021

Anticipated effective date: November 25, 2021

Six-month *Texas Register* filing deadline: December 4, 2021

**Agency contacts:**

Garrett Heathman, Rule Project Manager, Waste Permits Division, (512) 239-0520

Audrey Liter, Staff Attorney, (512) 239-0684

Cecilia Mena, Texas Register Rule/Agenda Coordinator, (512) 239-6098

**Attachments:**

None.

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Jim Rizk  
Morgan Johnson  
Brody Burks  
Office of General Counsel  
Garrett Heathman  
Audrey Liter  
Cecilia Mena

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §335.323 and §335.325.

Amended §335.323 and §335.325 are adopted *with changes* to the proposed text as published in the June 04, 2021, issue of the *Texas Register* (46 TexReg 3499) and, therefore, will be republished.

### **Background and Summary of the Factual Basis for the Adopted Rules**

Texas Health and Safety Code (THSC), §361.134 and §361.136 allows the commission to collect fees for industrial solid waste and hazardous waste generation and management. Industrial solid waste covers what is commonly referred to as Class 1 nonhazardous waste or nonhazardous waste. Additionally, THSC, §361.133(d) sets a collection cap up to \$16 million in waste management fees annually and THSC, §361.134(c) provides collection caps of \$10,000 and \$50,000 for nonhazardous and hazardous waste generators, respectively. Fee schedules for waste generators and waste management have not changed since 1994. The commission adopts an increase in both the generator and management fees and the ability to adjust fees annually under a specified maximum fee schedule. The increase in fees and the ability to adjust fees will allow the commission to optimize existing statutory caps to manage the Waste Management Account more adequately. The commission will utilize various communication strategies to inform the public and regulated entities of fee changes.

### **Section by Section Discussion**

In addition to the adopted revisions associated with this rulemaking, various non-substantive changes are adopted to update references or correct grammar to be consistent throughout Chapter 335. These changes are non-substantive and are not specifically discussed in the Section by Section Discussion portion of this preamble.

#### *Subchapter J: Hazardous Waste Generation, Facility and Disposal Fee System*

##### *§335.323, Generation Fee Assessment*

The commission adopts the amendments to the tables located in §335.323(e)(1) and (2) to provide for increases to the generator fee for both hazardous and Class 1 nonhazardous waste generators. The commission adopts §335.323(e)(3) to allow the executive director to adjust the fees on an annual basis at or below the established maximum annual fee schedules in the revised tables located in §335.323(e)(1) and (2). Since the proposal, the tables in §335.323(e)(1) and (2) are amended to include table numbers and titles. The table in §335.323(e)(2) is amended to clarify the classification of waste. The commission is making these changes to clarify the names of the fee schedules in response to comments.

In response to comments, the agency is further describing how the executive director will inform regulated entities of the fee change. For generator fees, which are paid annually on the calendar year, the executive director plans to provide communication of changes 30 days before the initial fee rate change and 90 days before any future

changes to the fee rate. If adopted, the executive director would charge the new fee rate to waste generated on or after January 1, 2022 and would send communication of changes for the 2022 fee schedule by December 1, 2021. After the initial rollout, communication of yearly fee adjustments would occur no later than October 1 of the year prior to the effective date of the fee adjustments. Since the proposal, language has been added to §335.323(e)(3) stating the executive director will notify fee payers of the new fee rate before the rates go into effect. Additionally, the executive director made a non-substantive clarification by replacing "up to" with "below" to better describe that the executive director must set fee rates at or below the fee schedules in rule.

In response to comments, the executive director anticipates increasing the generation fee in four equivalent increases over a period of four years. For generator fees, the executive director will begin charging increased fees for the first adjustment on January 1, 2022, and future adjustments on each subsequent January 1. The executive director will monitor fund balances and projected revenue each fiscal year to determine if adjustments are necessary.

*§335.325, Industrial Solid Waste and Hazardous Waste Management Fee Assessment*

The commission adopts the amendments to the tables located in §335.325(j)(1) and (2) to provide for increases to the waste management fee for both hazardous and Class 1 nonhazardous waste management facilities. The commission adopts §335.325(j)(3) to

allow the executive director to adjust the fees on an annual basis at or below the established maximum fee schedules in the revised tables located in §335.325(j)(1) and (2). Since the proposal, the tables in §335.325(j)(1) and (2) are amended to include table numbers and titles. The commission is making this change to clarify the names of the tables in response to comments.

In response to comments, the agency is further describing how the executive director will inform regulated entities of the fee change. For management fees, which are paid monthly, the executive director plans to provide communication of changes 90 days before the initial fee rate change and 90 days before any future changes to the fee rate. If adopted, the executive director would charge the new fee rate to waste managed on or after March 1, 2022, and communication of changes would be provided by December 1, 2021. After the initial rollout, the fees would be adjusted annually, on September 1 of each year, and communication of changes would be provided by June 1 of each year. Since the proposal, language has been added to §335.325(j)(3) stating the executive director will notify fee payers of the new fee rate before the rates go into effect. Additionally, the executive director made a non-substantive clarification by replacing "up to" with "below" to better describe that the executive director must set fee rates at or below the fee schedules in rule.

In response to comments, the executive director anticipates increasing the management fee in four nearly equivalent increases over a period of three and a half

years. For management fees, the executive director will begin charging increased fees for the first adjustment on March 1, 2022, and on September 1, 2023, for the second adjustment, and future adjustments, if necessary, on each subsequent September 1. The executive director will monitor fund balances and projected revenue each fiscal year to determine if adjustments are necessary.

### **Final Regulatory Impact Determination**

The commission reviewed the rulemaking adoption in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225. The commission 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 that statute. A "major environmental rule" is a rule with the specific intent 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 specific intent of the rulemaking adoption is not to protect the environment or to reduce risks to human health from environmental exposure. The intent of the rulemaking adoption is to provide additional revenue for the commission's waste fund, thus the rulemaking adoption is not a major environmental rule. Additionally, this rulemaking does not adversely affect, in a material way, the economy, a section of the

economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Furthermore, even if the rulemaking adoption did meet the definition of a "major environmental rule," the adopted rules do not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 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.

First, the rulemaking will not exceed a standard set by federal law because the commission is adopting this rulemaking within the authority given by the federal hazardous waste program.

Second, the rulemaking will not adopt requirements that are more stringent than existing state laws. The THSC authorizes the commission to collect an annual generation fee from each generator who generates Class I industrial solid waste or hazardous waste and to collect a fee on industrial solid waste and hazardous waste

managed at a facility, and the rulemaking adoption seeks to adjust fees consistent with state law.

Third, the rulemaking adoption will not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. Rather, the commission is adopting rules necessary to maintain the budget for the authorized state hazardous waste program.

Fourth, this rulemaking adoption does not seek to adopt a rule solely under the general powers of the agency because sections of the THSC authorize this rulemaking. The Statutory Authority section of this preamble cites to the sections of the THSC that authorize this rulemaking.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

### **Takings Impact Assessment**

The commission evaluated the rulemaking adoption and performed analysis of whether the rulemaking adoption constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the rulemaking adoption is to provide the

additional revenue necessary to operate commission waste program activities funded by the Waste Management Account in a manner that is consistent with the statutory requirements set forth in the THSC. The rulemaking adoption will substantially advance this stated purpose by increasing the fees for industrial solid waste and hazardous waste generation and management and enabling the commission to adjust fees annually in accordance with existing statutory caps.

Promulgation and enforcement of the rulemaking adoption will be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations will not affect a landowner's rights in private real property because this rulemaking will not burden (constitutionally) nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, the rulemaking adoption will not burden private real property because it will amend a fee rule relating to funding for the commission's waste program activities.

#### **Consistency with the Coastal Management Program**

The commission reviewed this rulemaking adoption for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the amendments are consistent with CMP goals and policies. The amendments are consistent with CMP goals and policies because the rulemaking is a fee rule, which is a procedural

mechanism for paying for commission programs; will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

### **Public Comment**

The commission held a public hearing on June 29, 2021. The comment period closed on July 06, 2021. The commission received comments from Corteva Agriscience (CA), Day Enterprises, LLC (DE), Heritage Environmental Services, LLC (HES), Texas Molecular Holdings LLC (TM), and US Ecology (USE). One of the comments was in support of the proposed rule revisions, three of the comments were against the proposed rule revisions, one comment was neither in support of nor against the proposed rule revisions, and all of the comments suggested changes to the proposed rules or fee structures.

### **Response to Comments**

#### *Comment*

CA disagreed with the increase to the maximum generation fee schedule that would

allow an increase to the maximum fee in one year and recommended capping generation fee increases with a maximum annual percentage. HES recommended a phased approach to fee increases. USE asked if it is necessary for the commission to increase the fees to the maximum, or if a phased increase could meet the commission's needs.

***Response***

**The Waste Management Account, Fund 0549, is facing a declining fund balance, and an increase in revenue is necessary for the commission to carry out its duties for waste management programs. After considering the comments received, the commission agrees that a phased approach is appropriate to increase fee rates, up to the maximum schedules. The executive director will utilize the flexibility in newly adopted 30 TAC §335.323(e)(3) and §335.325(j)(3) to incrementally increase the fee rates and anticipates four equivalent increases over a period of three and a half years for the management fee and four years for the generation fee. The executive director will monitor fund balances and projected revenue each fiscal year to determine if increases are necessary. The commission has made no changes in rule in response to these comments.**

***Comment***

DE recommended that the commission increase the waste management annual fee cap under THSC, §361.133(d) and to adjust the cap and fee annually based on inflation to

provide additional support to the commission's waste program activities.

***Response***

The Texas state legislature initiates revisions to statutory fee cap, and the commission's role is to implement rules in accordance with the legislation pursuant to the Texas Government Code, Chapter 2001. The commission has the authority to increase the fees for hazardous and Class 1 nonhazardous waste management under THSC, §361.136, but must remain within the statutory fee cap established in THSC, §361.133(d). The adopted fee increase was developed to allow the commission to meet but not exceed the statutory limit. The commission does not have the authority to adjust the statutory cap. Therefore, the commission cannot adjust the fee cap based on inflation. The commission has made no changes in response to this comment.

***Comment***

HES and USE commented that the proposed fee increases could reduce Texas industry competitiveness with industries in other states, and USE commented that if customers doing business in Texas utilize out of state disposal options there could be a revenue reduction.

***Response***

The commission considered the fee rate structures used by other states and

**determined that the adopted fee structure is comparable. However, as described in the above response to comment, the commission will utilize a phased incremental increase in fee rates, up to the maximum schedules, and anticipates four equivalent increases over a period of three and a half to four years. The executive director will monitor fund balances and projected revenue each fiscal year to determine if increases are necessary. Additionally, and as discussed in a response to comment below, the executive director will analyze waste management and disposal trends over the previous 18 months before setting the waste management fee rate for the upcoming year. The commission has made no changes in rule in response to this comment.**

*Comment*

HES and USE recommended that the commission initiate a new stakeholder group to further address the fee increases.

*Response*

**The commission requested comments and guidance from the regulated community through a stakeholder meeting and 30-day comment period in July 2019 and received no substantive comments. The commission has made no changes in response to this comment.**

*Comment*

USE recommends increasing the statutory cap for municipal solid waste (MSW) fees in lieu of the proposed industrial and hazardous waste fees increase.

***Response***

The Texas state legislature initiates revisions to statutory fee caps, and the commission's role is to implement rules in accordance with the legislation pursuant to the Texas Government Code, Chapter 2001. The commission has the authority to increase the fees for hazardous and Class 1 nonhazardous waste generators and management under THSC, §361.134 and §361.136 subject to statutory caps. This rule increases the fees while remaining within the statutory cap provided by THSC, §361.134(c) and §361.133(d). The commission does not have the authority to raise the MSW fees above the rates set in THSC, §361.013. Moreover, any revisions to MSW fees are beyond the scope of this rulemaking. Thus, the commission has made no changes in response to this comment.

***Comment***

USE recommended revisions to the proposed management fee structure to avoid exceeding the revenue caps or issuing rebates.

***Response***

The management fee increase was developed to meet but not exceed the statutory limit in THSC, §361.133(d). The purpose of the ability to adjust the fee in the future

**is to prevent overcollection caused by increased waste volumes. The executive director will analyze waste management and disposal trends over the previous 18 months before setting the fee for the upcoming year. The commission has made no changes in response to this comment.**

*Comment*

USE and TM recommend revising the proposed regulations to include advance notification for fee revisions and the commission's plans to annually adjust the fees to allow the regulated community to plan for the adjustments. TM recommends a 60-day minimum advance notification.

*Response*

**The commission acknowledges the impact fee adjustments may have in fee payers' budgeting processes and will communicate changes 90 days before the new fees become effective. Communications will include updates to agency forms and websites, along with notification through GovDelivery listservs and other email communication.**

**For management fees, which are paid monthly, the executive director plans to provide communication of changes 90 days before the initial fee rate change and 90 days before any future changes to the fee rate. If adopted, the executive director would charge the new fee rate to waste managed on or after March 1, 2022, and**

**communication of changes would be provided by December 1, 2021. After the initial rollout, the fees would be adjusted annually, on September 1 of each year, and communication of changes would be provided by June 1 of each year.**

**For generator fees, which are paid annually on the calendar year, the executive director plans to provide communication of changes 30 days before the initial fee rate change and 90 days before any future changes to the fee rate. If adopted, the executive director would charge the new fee rate to waste generated on or after January 1, 2022 and would send communication of changes for the 2022 fee schedule by December 1, 2021. After the initial rollout, communication of fee adjustments would occur no later than October 1 of the year prior to the effective date of the fee adjustments.**

**The commission has added language in rule that requires the executive director to notify fee payers of fee adjustments before adjusted rates go into effect.**

*Comment*

TM commented that the increase in generator fees will likely impact disposal costs and requested clarification for the increases to the generator fees for both hazardous and Class 1 nonhazardous wastes.

*Response*

**The commission has the authority to increase the fees for hazardous and Class 1 nonhazardous waste generators and management under THSC, §361.134 and §361.136 subject to statutory caps. Revisions to the industrial and hazardous waste generator and management fee rules are needed to increase revenue into the Waste Management Account which is facing a declining fund balance. The increased fee rates will allow the commission to increase revenue while remaining within the statutory caps and equitably collect fees for waste processing and disposal across the hazardous and municipal waste program activities. As described in above response to comments, the commission will utilize a phased incremental increase in fee rates, up to the maximum schedules, and anticipates four equivalent increases over a period of three and a half to four years. The executive director will monitor fund balances and projected revenue each fiscal year to determine if increases are necessary. The commission has made no changes in rule in response to this comment.**

*Comment*

TM recommended rule language changes to §335.323(e)(2) regarding “Class 1 Nonhazardous Waste,” and the clarification on the use of “Table,” “Figure,” and “Schedule” in the fee schedules.

*Response*

**The commission has made revisions to clarify the use of “Table” in reference to the**

**fee schedules in §335.323 and §335.325. The commission has also made a revision to §335.323(e)(2) to specify “Class 1” in “Class 1 Nonhazardous Waste.”**

*Comment*

TM commented appreciation for the consistent increase across all disposition methods.

*Response*

**The commission acknowledges the comment. The commission has made no changes in response to this comment.**

**SUBCHAPTER J: HAZARDOUS WASTE GENERATION, FACILITY AND DISPOSAL FEE  
SYSTEM**

**§335.323, §335.325**

**Statutory Authority**

The rules are adopted under the authority of Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.024, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under THSC, Chapter 361; and THSC, §361.017, which establishes the commission's jurisdiction over all aspects of the management of industrial solid waste and municipal hazardous waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction.

The adopted rules implement THSC, §§361.133(d), 361.134, 361.134(c), and 361.136.

**§335.323. Generation Fee Assessment.**

(a) An annual generation fee is hereby assessed each industrial or hazardous solid waste generator that is required to notify under §335.6 of this title (relating to

Notification Requirements) and which generates Class 1 industrial solid waste or hazardous waste or whose act first causes such waste to become subject to regulation under Subchapter B of this chapter (relating to Hazardous Waste Management General Provisions) on or after September 1, 1985. These fees shall be deposited in the hazardous and solid waste fee fund. The amount of a generation fee is determined by the total amount of Class 1 nonhazardous waste or hazardous waste generated during the previous calendar year. The annual generation fee may not be less than \$50. The annual generation fee for hazardous waste shall not be more than \$50,000 and for nonhazardous waste not more than \$10,000.

(b) Wastewaters are exempt from assessment under the following conditions.

(1) Wastewaters containing hazardous wastes which are designated as hazardous solely because they exhibit a hazardous characteristic as defined in 40 Code of Federal Regulations (CFR) Part 261, Subpart C, concerning characteristics of hazardous waste, and are rendered nonhazardous [non-hazardous] by neutralization or other treatment on-site in totally enclosed treatment facilities or wastewater treatment units for which no permit is required under §335.2 of this title (relating to Permit Required) or §335.41 of this title (relating to Purpose, Scope and Applicability) are exempt from the assessment of hazardous waste generation fees.

(2) Wastewaters classified as Class 1 industrial solid wastes because they meet the criteria for a Class 1 waste under the provisions of §335.505 of this title (relating to Class 1 Waste Determination) and are treated on-site in totally enclosed treatment facilities or wastewater treatment units for which no permit is required under §335.2 of this title or §335.41 of this title and no longer meet the criteria for a Class 1 waste are exempt from the assessment of waste generation fees.

(3) Wastewaters containing hazardous wastes which are designated as hazardous solely because they exhibit a hazardous characteristic as defined in 40 CFR Part 261, Subpart C, concerning characteristics of hazardous waste, and are transported via direct hard pipe connection to a publicly-owned treatment works (POTW) and rendered nonhazardous by neutralization or other treatment are exempt from the assessment of hazardous waste generation fees.

(4) Wastewaters classified as Class 1 industrial solid wastes because they meet the criteria for a Class 1 waste under the provisions of §335.505 of this title and are transported via direct hard pipe connection to a POTW for treatment and no longer meet the criteria for a Class 1 waste are exempt from the assessment of waste generation fees.

(5) Wastewaters which are designated as hazardous waste solely under 40 CFR §261.3(a)(2)(iv) that are generated at terminal operations due to de minimis losses

of commercial chemical products and chemical intermediates listed in 40 CFR §261.33 and are treated on-site or off-site at a POTW are exempt from the assessment of hazardous waste generation fees, provided that any discharge to a POTW is via a direct hardpipe connection. For the purposes of this section, de minimis losses shall have the meaning described in 40 CFR §261.3(a)(2)(iv)(D).

(6) These exemptions or adjustments in fee assessment in no way limit a generator's obligation to report such waste generation or waste management activity under any applicable provision of this chapter.

(7) A wastewater stream treated to meet a different waste classification is subject to only one assessment under this section.

(c) Wastes generated in a removal or remedial action accomplished through the expenditure of public funds from the hazardous and solid waste remediation fee fund shall be exempt from any generation fee assessed under this section.

(d) Wastes which are recycled shall be exempt from any generation fee assessed under this section.

(e) Generation fees are to be assessed up to the maximum annual fee according to the schedules in the tables in Figure: 30 TAC §335.323(e)(1) and (2) in this subsection. ~~Tables located in this subsection.~~ [following schedule:]

(1) Table 1: Hazardous Waste Schedule [hazardous] ~~waste schedule.~~ [:]

**Figure: 30 TAC §335.323(e)(1)**

**[Figure: 30 TAC §335.323(e)(1)]**

Table 1

Hazardous Waste Schedule

<b>Waste Reported (Tons)</b>	<b><u>Maximum</u> Annual Fee</b>
Less than 1 ton	No charge
from <u>1 - 25</u> [1 - 50] tons	<u>\$150</u> [\$100]
Greater than <u>25</u> [50] tons	<u>\$6.00</u> [\$2.00] per ton

(2) Table 2: Class 1 Nonhazardous Waste Schedule [nonhazardous] ~~waste schedule.~~ [:]

**Figure: 30 TAC §335.323(e)(2)**

**[Figure: 30 TAC §335.323(e)(2)]**

Table 2

Class 1 Nonhazardous Waste Schedule

Waste Reported (Tons)	<u>Maximum Annual Fee</u>
Less than 1 ton	No charge
From <u>1 - 50</u> [1 - 100] tons	<u>\$100</u> [\$50]
Greater than <u>50</u> [100] tons	<u>\$2.00</u> [\$.50] per ton

(3) The executive director may adjust fees at or below ~~up to~~ the annual fee specified in the fee schedules in this subsection, on an annual basis, and will notify fee payers of the upcoming fee rate before the rates go into effect.

(f) Any claim of exemption from or adjustment to the assessment of a generation fee under this section must be made in writing to the executive director prior to the due date of the assessment.

**§335.325. Industrial Solid Waste Generation, Facility and Disposal Fee System.**

(a) A fee is hereby assessed on each owner or operator of a waste storage, processing, or disposal facility, except as provided in subsections (b) - (e) of this section. A fee is assessed for hazardous wastes which are stored, processed, disposed,

or otherwise managed and for Class 1 industrial wastes which are disposed at a commercial facility. For the purpose of this section, the storage, processing, or disposal of hazardous waste for which no permit is required under §335.2 of this title (relating to Permit Required) or §335.41 of this title (relating to Purpose, Scope and Applicability) is not subject to a hazardous waste management fee.

(b) A fee imposed on the owner or operator of a commercial hazardous waste storage, processing, or disposal facility for hazardous wastes which are generated in this state and received from an affiliate or wholly owned subsidiary of the commercial facility, or from a captured facility, shall be the same fee imposed on a noncommercial facility. For the purpose of this section, an affiliate of a commercial hazardous waste facility must have a controlling interest in common with that facility.

(c) The storage, processing, or disposal of industrial solid waste or hazardous wastes generated in a removal or remedial action accomplished through the expenditure of public funds from the hazardous and solid waste remediation fee fund shall be exempt from the assessment of a waste management fee under this section.

(d) A fee shall not be imposed on the owner or operator of a waste storage, processing, or disposal facility for the storage of hazardous wastes if such wastes are stored within the time periods allowed by and in accordance with the provisions of §335.69 of this title (relating to Accumulation Time).

(e) A fee may not be imposed under this section on the operation of a facility permitted under the Texas Water Code, Chapter 26, or the federal National Pollutant Discharge Elimination System program for wastes treated, processed, or disposed of in a wastewater treatment system that discharges into surface waters of the state. For the purpose of this section, the management of a hazardous waste in a surface impoundment which is not exempt from assessment under this subsection will be assessed the fee for processing under subsection (j) of this section.

(f) The waste management fee authorized under this section shall be based on the total weight or volume of a waste except for wastes which are disposed of in an underground injection well, in which case the fee shall be based on the dry weight of the waste, measured in dry weight tons (dwt), as defined in §335.322 of this title (relating to Definitions) and §335.326 of this title (relating to Dry Weight Determination).

(g) The hazardous waste management fee for wastes generated in this state shall not exceed \$40 per ton for wastes which are landfilled.

(h) The operator of a waste storage, processing, or disposal facility receiving industrial solid waste or hazardous waste from out-of-state generators shall be assessed the fee amount required on wastes generated in state plus an additional

increment to be established by rule, except as provided in subsection (k) of this section.

(i) For the purposes of subsection (j) of this section, energy recovery means the burning or incineration of a hazardous waste fuel and fuel processing means the handling of a waste fuel, including storage and blending, prior to its disposal by burning.

(j) Except as provided in subsections (k) - (q) of this section, waste management fees shall be assessed up to the maximum fee according to the schedules in the tables in Figure: 30 TAC §335.323(j)(1) and (2) in this subsection. ~~Tables located in this subsection.~~ [following schedule.]

(1) Table 1: Hazardous Waste Schedule ~~waste schedule.~~

**Figure: 30 TAC §335.325(j)(1)**

**[Figure: 30 TAC §335.325(j)(1)]**

Table 1

Hazardous Waste Schedule

	<u>Maximum Fee Noncommercial [Noncommercial]</u>		<u>Maximum Fee Commercial [Commercial]</u>	
Disposition	In State	Imported	In State	Imported

Landfill	<u>\$21.75/ton</u> [\$15/ton]	<u>\$27.55/ton</u> [\$19/ton]	<u>\$40/ton</u> [\$30/ton]	<u>\$50/ton</u> [\$37.50/ton]
Land Treatment	<u>\$17.40/ton</u> [\$12/ton]	<u>\$21.75/ton</u> [\$15/ton]	<u>\$34.80/ton</u> [\$24/ton]	<u>\$43.50/ton</u> [\$30/ton]
Underground Injection	<u>\$13.05/dwt</u> [\$9/dwt]	<u>\$15.95/dwt</u> [\$11/dwt]	<u>\$26.10/dwt</u> [\$18/dwt]	<u>\$32.63/dwt</u> [\$22.50/dwt]
Incineration	<u>\$11.60/ton</u> [\$8/ton]	<u>\$14.50/ton</u> [\$10/ton]	<u>\$23.20/ton</u> [\$16/ton]	<u>\$29/ton</u> [\$20/ton]
Processing	<u>\$5.80/ton</u> [\$4/ton]	<u>\$7.25/ton</u> [\$5/ton]	<u>\$11.60/ton</u> [\$8/ton]	<u>\$14.50/ton</u> [\$10/ton]
Storage	<u>\$1.45/ton</u> [\$1/ton]	<u>\$1.45/ton</u> [\$1/ton]	<u>\$2.90/ton</u> [\$2/ton]	<u>\$2.90/ton</u> [\$2/ton]
Energy Recovery	<u>\$5.80/ton</u> [\$4/ton]	<u>\$5.80/ton</u> [\$4/ton]	<u>\$11.60/ton</u> [\$8/ton]	<u>\$11.60/ton</u> [\$8/ton]
Fuel Processing	<u>\$4.35/ton</u> [\$3/ton]	<u>\$4.35/ton</u> [\$3/ton]	<u>\$8.70/ton</u> [\$6/ton]	<u>\$8.70/ton</u> [\$6/ton]

(2) Table 2: Class 1 Nonhazardous Waste Schedule ~~nonhazardous~~ [non-hazardous] ~~waste schedule~~.

**Figure: 30 TAC §335.325(j)(2)**

**[Figure: 30 TAC §335.325(j)(2)]**

Table 2

Class 1 Nonhazardous Waste Schedule

	<u><b>Maximum Fee</b></u> <u><b>Noncommercial</b></u> [Noncommercial]	<u><b>Maximum Fee</b></u> <u><b>Commercial</b></u> [Commercial]
--	---	--

Disposition	In State	Imported	In State	Imported
Landfill	<u>N/A</u>	<u>N/A</u>	<u>\$8.00/ton</u> [\$6/ton]	<u>\$10/ton</u> [\$7.50/ton]
Land Treatment	<u>N/A</u>	<u>N/A</u>	<u>\$6.96/ton</u> [\$4.80/ton]	<u>\$8.70/ton</u> [\$6/ton]
Underground Injection	<u>N/A</u>	<u>N/A</u>	<u>\$5.22/dwt</u> [\$3.60/dwt]	<u>\$6.53/dwt</u> [\$4.50/dwt]
Incineration	<u>N/A</u>	<u>N/A</u>	<u>\$4.64/ton</u> [\$3.20/ton]	<u>\$5.80/ton</u> [\$4/ton]

(3) The executive director may adjust fees at or below ~~up to~~ the fee specified in the fee schedule, on an annual basis, and will notify fee payers of the upcoming fee rate before the rates go into effect.

(k) For wastes which are generated out-of-state, the fee will be that specified in subsection (j) of this section, except that the fee for the storage, processing, incineration, and disposal of hazardous waste fuels shall be the same for wastes generated out-of-state and in-state.

(l) Except as provided in subsection (m) of this section, only one waste management fee shall be paid for a waste managed at a facility. In any instance where more than one fee could be applied under this section to a specific volume of waste, the higher of the applicable fees will be assessed.

(m) A fee for storage of hazardous waste shall be assessed in addition to any fee for other waste management methods at a facility. No fee shall be assessed under this section for the storage of a hazardous waste for a period of less than 90 days as determined from the date of receipt or generation of the waste (or the effective date of this section). The fee rate specified in the schedule under subsection (j) of this section shall apply to the quantity of waste in any month which has been in storage for more than 90 days or the number for which an extension has been granted under §335.69 of this title.

(n) A facility which receives waste transferred from another facility shall pay any waste management fee applicable under this section and shall not receive credit for any fee applied to the management of the waste at the facility of origin.

(o) The fee rate for incineration of aqueous wastes containing 5.0% or less of total organic carbon will be 10% of the fee for incineration under the schedule in subsection (j) of this section.

(p) A commercial waste disposal facility receiving solid waste not subject to assessment under this section shall pay any assessment due under Chapter 330, Subchapter P of this title (relating to Fees and Reporting [Reports]). No fee for disposal of a solid waste under Chapter 330, Subchapter P of this title, shall be assessed in addition to a fee for disposal under this section.

(q) An operator of a hazardous waste injection well electing to separately measure inorganic salts in the determination of dry weight under the provisions of §335.326(c) of this title shall pay a fee equivalent to 20% of the fee for underground injection assessed in subsection (j) of this section for the components of the waste stream determined to be inorganic salts.

(d) An otherwise Allowable Cost will not be eligible for reimbursement if the benefit from the cost of goods or services charged to the Grant Award is not realized within the applicable term of the Grant Award. The Grant Award should not be charged for the cost of goods or services that benefit another Grant Award or benefit a period prior to the Grant Contract effective date or after the termination of the Grant Contract.

(e) Grant Award funds shall not be used to reimburse unallowable expenses, including, but not limited to:

(1) Bad debt, such as losses arising from uncollectible accounts and other claims and related costs.

(2) Contributions to a contingency reserve or any similar provision for unforeseen events.

(3) Contributions and donations made to any individual or organization.

(4) Costs of entertainment, amusements, social activities, and incidental costs relating thereto, including tickets to shows or sports events, meals, alcoholic beverages, lodging, rentals, transportation and gratuities.

(5) Costs relating to food and beverage items, unless the food item is related to the issue studied by the project that is the subject of the Grant Award.

(6) Fines, penalties, or other costs resulting from violations of or failure to comply with federal, state, local or Indian tribal laws and regulations.

(7) An honorary gift or a gratuitous payment.

(8) Interest and other financial costs related to borrowing and the cost of financing.

(9) Legislative expenses such as salaries and other expenses associated with lobbying the state or federal legislature or similar local governmental bodies, whether incurred for purposes of legislation or executive direction.

(10) Liability insurance coverage.

(11) Benefit replacement pay or legislatively-mandated pay increases for eligible general revenue-funded state employees at Grant Recipient state agencies or universities.

(12) Professional association fees or dues for an individual employed by the Grant Recipient. Professional association fees or dues for the Grant Recipient's membership in business, technical, and professional organizations may be allowed, with prior approval from the Institute, if:

(A) the professional association is not involved in lobbying efforts; and

(B) the Grant Recipient demonstrates how membership in the professional association benefits the Grant Award project(s).

(13) Promotional items and costs relating to items such as T-shirts, coffee mugs, buttons, pencils, and candy that advertise or promote the project or Grant Recipient.

(14) Fees for visa services.

(15) Payments to a subcontractor if the subcontractor working on a Grant Award project employs an individual who is a Relative of the Principal Investigator, Program Director, Company Representative, Authorized Signing Official, or any person designated as Key Personnel for the same Grant Award project (collectively referred to as "affected Relative"), and:

(A) the Grant Recipient will be paying the subcontractor with Grant Award funds for any portion of the affected Relative's salary; or

(B) the Relative submits payment requests on behalf of the subcontractor to the Grant Recipient for payment with Grant Award funds.

(C) For exceptional circumstances, the Institute's Chief Executive Office may grant an exception to allow payment of Grant Award funds if the Grant Recipient notifies the Institute prior to finalizing the subcontract. The Chief Executive Officer must notify the Oversight Committee in writing of the decision to allow reimbursement for the otherwise unallowable expense.

(D) Nothing herein is intended to supersede a Grant Recipient's internal policies, to the extent that such policies are stricter.

(16) Fundraising.

(17) Tips or gratuities.

(f) Pursuant to Texas Health and Safety Code Section 102.203(b) the Institute may authorize reimbursement for one or more of the following expenses incurred by a cancer clinical trial participant that are associated with participating in a clinical trial and included in the Grant Recipient's Approved Budget:

(1) transportation, including car mileage, bus fare, taxi or ride hailing fare exclusive of tips, and commercial economy class airfare within the borders of the State of Texas;

(2) lodging, and

(3) any cost reimbursed under a cancer clinical trial participation program established pursuant to Texas Health and Safety Code Chapter 50 (relating to Cancer Clinical Trial Participation Program).

(g) [(f)] The Institute is responsible for making the final determination regarding whether an expense shall be considered an Allowable Cost.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 21, 2021.

TRD-202102050

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

Earliest possible date of adoption: July 4, 2021

For further information, please call: (512) 305-8487



## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE

##### SUBCHAPTER J. HAZARDOUS WASTE GENERATION, FACILITY AND DISPOSAL FEE SYSTEM

### 30 TAC §§335.323, §335.325

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§335.323 and §335.325.

#### Background and Summary of the Factual Basis for the Proposed Rules

Texas Health and Safety Code (THSC), §361.134 and §361.136 allows the commission to collect fees for industrial solid waste and hazardous waste generation and management. Industrial solid waste covers what is commonly referred to as Class 1 non-hazardous waste or nonhazardous waste. Additionally, THSC, §361.133(d) sets a collection cap up to \$16 million in waste management fees annually and THSC, §361.134(c) provides collection caps of \$10,000 and \$50,000 for nonhazardous and hazardous generators, respectively. Fee schedules for waste generators and waste management have not changed since 1994. The commission proposes an increase in both the generator and management fees and the ability to adjust fees annually under a specified maximum fee schedule. The increase in fees and the ability to adjust fees would allow the commission to optimize existing statutory caps to manage the Waste Management Account more adequately. The commission would utilize various communication strategies to inform the public and regulated entities of fee changes.

#### Section by Section Discussion

In addition to the proposed revisions associated with this rulemaking, various non-substantive changes are proposed to update references or correct grammar to be consistent throughout Chapter 335. These changes are non-substantive and are not specifically discussed in the Section by Section Discussion portion of this preamble.

#### *Subchapter J: Hazardous Waste Generation, Facility and Disposal Fee System*

##### *§335.323, Generation Fee Assessment*

The commission proposes to amend the figures located in §335.323(e)(1) and (2) to provide for increases to the generator fee for both hazardous and Class 1 nonhazardous waste generators. The commission proposes §335.323(e)(3) to allow the executive director to adjust the fees on an annual basis at or below the established maximum annual fee schedules in the revised figures located in §335.323(e)(1) and (2).

##### *§335.325, Industrial Solid Waste and Hazardous Waste Management Fee Assessment*

The commission proposes to amend the figures located in §335.325(j)(1) and (2) to provide for increases to the waste management fee for both hazardous and Class 1 nonhazardous waste management facilities. The commission proposes §335.325(j)(3) to allow the executive director to adjust the fees on an annual basis at or below the established maximum fee schedules in the revised figures located in §335.323(j)(1) and (2).

#### Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules would be in effect, fiscal implications would be anticipated for the agency and for other units of state or local government as a result of administration or enforcement of the proposed rulemaking. This rulemaking addresses a proposed fee increase for the

generation and management fees and the ability to adjust fees annually within the fee schedule.

The proposed rulemaking would increase the management fee schedule by 45%. The executive director would have the option of raising fees to the maximum or phasing in the increase. The agency estimates that the maximum revenue increase for the management fee would be \$4,848,962 per year for the next five years. In accordance with state law, half of the funds would be deposited into General Revenue Account 0549 Waste Management, a dedicated account which has experienced a declining fund balance. The other half of the revenue would be deposited into General Revenue Account 0550 Hazardous and Solid Waste Remediation Fees.

The proposed rulemaking would increase the generation fee from \$0.50 to a maximum of \$2.00 per ton for Class 1 nonhazardous waste generators and from \$2.00 to a maximum of \$6.00 per ton for hazardous waste generators. The agency estimates that the maximum revenue increase for the generation fee would be \$3,889,305 per year for the next five years. The revenue would be deposited into General Revenue Account 0549 Waste Management.

The proposed fee increase may impact units of local government. Twenty-five percent of the fees collected for the management of hazardous and Class 1 nonhazardous waste at commercial facilities is sent to the county in which the facility is located. At the maximum rate, the agency estimates that the proposed rules would generate an additional \$835,564 for these counties per year.

Based on agency data for fiscal year 2020, six governmental entities and 81 waste generators owned or operated by a unit of government are expected to be affected. Additional facilities may be impacted if they begin to manage or generate waste. The estimated average increase of the proposed management fees on these facilities would be \$1,616 per facility per year. The estimated average increase of the proposed generation fees on these facilities with Class 1 nonhazardous waste would be \$1,586 per facility per year, and the estimated average increase for hazardous waste would be \$3,529 per facility per year. The methodology used to determine the revenue estimates included averaging agency data from fiscal years 2019 and 2020.

#### Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years that the proposed rules would be in effect, the public benefit anticipated would be increased stability in the General Revenue Account 0549 Waste Management, which has had a decreasing fund balance in recent years. The funds from this dedicated account are used to regulate industrial solid and hazardous waste, as stated in the THSC, §361.132. The regulation of this waste is required by law to protect human health and the environment.

The proposed rulemaking is anticipated to result in fiscal implications for certain businesses or individuals, specifically all permitted and active industrial hazardous waste facilities. The agency estimates there are 176 waste management facilities and 2,404 industrial or hazardous solid waste generators.

The proposed rulemaking would increase the management fee schedule by 45%. The executive director would have the option of raising fees to the maximum or phasing in the increase. The estimated management fee increase will be \$53,058 per facility per year. The proposed rulemaking would increase the generation fee from \$0.50 to a maximum of \$2.00 per ton for Class 1

nonhazardous waste generators, and from \$2.00 to a maximum of \$6.00 per ton for hazardous waste generators. The estimated average increase of the proposed management fees on these facilities would be \$1,616 per facility per year. The estimated average increase of the proposed generation fees on these facilities with Class 1 nonhazardous waste would be \$1,586 per facility per year, and the estimated average increase for hazardous waste would be \$3,529 per facility per year. The methodology used to determine the estimates included averaging agency data from fiscal years 2019 and 2020.

#### Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking would not adversely affect a local economy in a material way for the first five years that the proposed rules would be in effect.

#### Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking would not adversely affect rural communities in a material way for the first five years that the proposed rules would be in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

#### 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 rulemaking for the first five-year period the proposed rules would be in effect.

#### 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 rulemaking would not adversely affect a small or micro-business in a material way for the first five years the proposed rules would be in effect.

#### Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking would not create or eliminate a government program and would not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking would not require the creation of new employee positions nor eliminate current employee positions. The proposed rulemaking would increase fees paid to the agency. The proposed rulemaking would not create, expand, repeal or limit an existing regulation, nor would the proposed rulemaking increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rulemaking should not have a positive or negative impact on the state's economy.

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225. The commission 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 that statute. A "Major environmental rule" is a rule with the specific intent 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 specific intent of the proposed rulemaking is not to protect the environment or to reduce risks to human health from environmental exposure. The intent of the rulemaking is to provide additional revenue for the agency's waste fund, so the proposed rulemaking is not a major environmental rule.

Furthermore, even if the proposed rulemaking did meet the definition of a "Major environmental rule", the proposed rules do not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 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 any of the four applicability requirements listed in Texas Government Code, §2001.0225.

First, the rulemaking would not exceed a standard set by federal law because the commission is proposing this rulemaking within the authority given by the federal hazardous waste program.

Second, the rulemaking would not propose requirements that are more stringent than existing state laws. The THSC authorizes the commission to collect an annual generation fee from each generator who generates Class I industrial solid waste or hazardous waste and to collect a fee on industrial solid waste and hazardous waste managed at a facility, and the proposed rulemaking seeks to adjust fees consistent with state law.

Third, the proposed rulemaking would not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. On the contrary, the commission is proposing rules necessary to maintain the budget for the authorized state hazardous waste program.

Fourth, this rulemaking would not seek to adopt a rule solely under the general powers of the agency. Rather, sections of the THSC would authorize this rulemaking, which are cited in the Statutory Authority section of this preamble.

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. 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 the proposed rules and performed analysis of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rules is to provide the commission with the additional revenue necessary to operate agency waste program activities funded by the Waste Management Account in a manner that is consistent with the statutory requirements set forth in the THSC. The proposed rules would substantially advance this stated purpose by increasing the fees for industrial solid waste and hazardous waste generation and management and enabling

the commission to adjust fees annually in accordance with existing statutory caps.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations would not affect a landowner's rights in private real property because this rulemaking would not burden (constitutionally) nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, the proposed rules would not burden private real property because they amend a fee rule which relates to funding for the commission's waste program activities.

#### Consistency with the Coastal Management Program

The commission reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the amendments are consistent with CMP goals and policies. The amendments are consistent with CMP goals and policies because the rulemaking is a fee rule, which is a procedural mechanism for paying for commission programs; would not have direct or significant adverse effect on any coastal natural resource areas; would not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendments would not violate (exceed) any standards identified in the applicable CMP goals and policies.

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 Virtual Hearing

The commission will hold a *virtual* public hearing on this proposal on June 29, 2021, at 10:00 a.m.. The virtual hearing is structured for the receipt of oral comments by interested persons. Individuals who register may present oral statements when called upon in order of registration. Open discussion will not be permitted during the virtual hearing; however, agency staff members will be available to discuss the proposal 30 minutes prior to the virtual hearing.

Persons who do not have internet access or who have special communication or other accommodation needs who are planning to participate in the virtual hearing should contact 1-800-RE-LAY-TX (TDD) to register. Accommodation requests should be made as far in advance as possible.

#### Registration

The hearing will be conducted remotely using an internet meeting service. Individuals who plan to attend the hearing and want to provide oral comments or want their attendance on record must register by Friday, June 25, 2021. To register for the hearing, please email [Rules@tceq.texas.gov](mailto:Rules@tceq.texas.gov) and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on June 28, 2021 to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

[https://teams.microsoft.com/join/19%3ameeting\\_ZG-JmNjjZDQYtYM2ZC0NDVklWE0MGMTNTA1ODNkODA3Y-](https://teams.microsoft.com/join/19%3ameeting_ZG-JmNjjZDQYtYM2ZC0NDVklWE0MGMTNTA1ODNkODA3Y-)

[Tlx%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%220ab3b264-6a49-48c6-afc8-8225e4a7b0ac%22%2c%22Is-BroadcastMeeting%22%3atrue%7d&btype=a&role=a](https://www6.tceq.texas.gov/rules/ecomments/)

#### Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to [fax4808@tceq.texas.gov](mailto:fax4808@tceq.texas.gov). Electronic comments may be submitted at: <https://www6.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 2020-010-335-WS. The comment period closes on July 6, 2021. Please choose only one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at <https://www.tceq.texas.gov/rules/prop.html>. For further information, please contact Garrett Heathman, Waste Permits Division, (512) 239-0520.

#### Statutory Authority

The rules are proposed under the authority of Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.024, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under THSC, Chapter 361; and THSC, §361.017, which establishes the commission's jurisdiction over all aspects of the management of industrial solid waste and municipal hazardous waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction.

The proposed rules implement THSC, §§361.133(d), 361.134, 361.134(c), and 361.136.

#### §335.323. *Generation Fee Assessment.*

(a) An annual generation fee is hereby assessed each industrial or hazardous solid waste generator that is required to notify under §335.6 of this title (relating to Notification Requirements) and which generates Class I industrial solid waste or hazardous waste or whose act first causes such waste to become subject to regulation under Subchapter B of this chapter (relating to Hazardous Waste Management General Provisions) on or after September 1, 1985. These fees shall be deposited in the hazardous and solid waste fee fund. The amount of a generation fee is determined by the total amount of Class 1 nonhazardous waste or hazardous waste generated during the previous calendar year. The annual generation fee may not be less than \$50. The annual generation fee for hazardous waste shall not be more than \$50,000 and for nonhazardous waste not more than \$10,000.

(b) Wastewaters are exempt from assessment under the following conditions.

(1) Wastewaters containing hazardous wastes which are designated as hazardous solely because they exhibit a hazardous characteristic as defined in 40 Code of Federal Regulations (CFR) Part 261, Subpart C, concerning characteristics of hazardous waste, and are rendered nonhazardous [~~non-hazardous~~] by neutralization or other treatment on-site in totally enclosed treatment facilities or wastewater treatment units for which no permit is required under §335.2 of this title (relating to Permit Required) or §335.41 of this title (relating to

Purpose, Scope and Applicability) are exempt from the assessment of hazardous waste generation fees.

(2) Wastewaters classified as Class 1 industrial solid wastes because they meet the criteria for a Class 1 waste under the provisions of §335.505 of this title (relating to Class 1 Waste Determination) and are treated on-site in totally enclosed treatment facilities or wastewater treatment units for which no permit is required under §335.2 of this title or §335.41 of this title and no longer meet the criteria for a Class 1 waste are exempt from the assessment of waste generation fees.

(3) Wastewaters containing hazardous wastes which are designated as hazardous solely because they exhibit a hazardous characteristic as defined in 40 CFR Part 261, Subpart C, concerning characteristics of hazardous waste, and are transported via direct hard pipe connection to a publicly-owned treatment works (POTW) and rendered nonhazardous by neutralization or other treatment are exempt from the assessment of hazardous waste generation fees.

(4) Wastewaters classified as Class 1 industrial solid wastes because they meet the criteria for a Class 1 waste under the provisions of §335.505 of this title and are transported via direct hard pipe connection to a POTW for treatment and no longer meet the criteria for a Class 1 waste are exempt from the assessment of waste generation fees.

(5) Wastewaters which are designated as hazardous waste solely under 40 CFR §261.3(a)(2)(iv) that are generated at terminal operations due to de minimis losses of commercial chemical products and chemical intermediates listed in 40 CFR §261.33 and are treated on-site or off-site at a POTW are exempt from the assessment of hazardous waste generation fees, provided that any discharge to a POTW is via a direct hardpipe connection. For the purposes of this section, de minimis losses shall have the meaning described in 40 CFR §261.3(a)(2)(iv)(D).

(6) These exemptions or adjustments in fee assessment in no way limit a generator's obligation to report such waste generation or waste management activity under any applicable provision of this chapter.

(7) A wastewater stream treated to meet a different waste classification is subject to only one assessment under this section.

(c) Wastes generated in a removal or remedial action accomplished through the expenditure of public funds from the hazardous and solid waste remediation fee fund shall be exempt from any generation fee assessed under this section.

(d) Wastes which are recycled shall be exempt from any generation fee assessed under this section.

(e) Generation fees are to be assessed up to the maximum annual fee according to the schedules in the Tables located in this subsection, following schedule:]

(1) Hazardous [~~hazardous~~] waste schedule. [:]  
Figure: 30 TAC §335.323(e)(1)  
[Figure: 30 TAC §335.323(e)(1)]

(2) Nonhazardous [~~nonhazardous~~] waste schedule. [:]  
Figure: 30 TAC §335.323(e)(2)  
[Figure: 30 TAC §335.323(e)(2)]

(3) The executive director may adjust fees at or up to the annual fee specified in the fee schedules in this subsection, on an annual basis.

(f) Any claim of exemption from or adjustment to the assessment of a generation fee under this section must be made in writing to the executive director prior to the due date of the assessment.

#### *§335.325. Industrial Solid Waste Generation, Facility and Disposal Fee System.*

(a) A fee is hereby assessed on each owner or operator of a waste storage, processing, or disposal facility, except as provided in subsections (b) - (e) of this section. A fee is assessed for hazardous wastes which are stored, processed, disposed, or otherwise managed and for Class 1 industrial wastes which are disposed at a commercial facility. For the purpose of this section, the storage, processing, or disposal of hazardous waste for which no permit is required under §335.2 of this title (relating to Permit Required) or §335.41 of this title (relating to Purpose, Scope and Applicability) is not subject to a hazardous waste management fee.

(b) A fee imposed on the owner or operator of a commercial hazardous waste storage, processing, or disposal facility for hazardous wastes which are generated in this state and received from an affiliate or wholly owned subsidiary of the commercial facility, or from a captured facility, shall be the same fee imposed on a noncommercial facility. For the purpose of this section, an affiliate of a commercial hazardous waste facility must have a controlling interest in common with that facility.

(c) The storage, processing, or disposal of industrial solid waste or hazardous wastes generated in a removal or remedial action accomplished through the expenditure of public funds from the hazardous and solid waste remediation fee fund shall be exempt from the assessment of a waste management fee under this section.

(d) A fee shall not be imposed on the owner or operator of a waste storage, processing, or disposal facility for the storage of hazardous wastes if such wastes are stored within the time periods allowed by and in accordance with the provisions of §335.69 of this title (relating to Accumulation Time).

(e) A fee may not be imposed under this section on the operation of a facility permitted under the Texas Water Code, Chapter 26, or the federal National Pollutant Discharge Elimination System program for wastes treated, processed, or disposed of in a wastewater treatment system that discharges into surface waters of the state. For the purpose of this section, the management of a hazardous waste in a surface impoundment which is not exempt from assessment under this subsection will be assessed the fee for processing under subsection (j) of this section.

(f) The waste management fee authorized under this section shall be based on the total weight or volume of a waste except for wastes which are disposed of in an underground injection well, in which case the fee shall be based on the dry weight of the waste, measured in dry weight tons (dwt), as defined in §335.322 of this title (relating to Definitions) and §335.326 of this title (relating to Dry Weight Determination).

(g) The hazardous waste management fee for wastes generated in this state shall not exceed \$40 per ton for wastes which are landfilled.

(h) The operator of a waste storage, processing, or disposal facility receiving industrial solid waste or hazardous waste from out-of-state generators shall be assessed the fee amount required on wastes generated in state plus an additional increment to be established by rule, except as provided in subsection (k) of this section.

(i) For the purposes of subsection (j) of this section, energy recovery means the burning or incineration of a hazardous waste fuel and fuel processing means the handling of a waste fuel, including storage and blending, prior to its disposal by burning.

(j) Except as provided in subsections (k) - (q) of this section, waste management fees shall be assessed up to the maximum fee according to the schedules in the Tables located in this subsection. [following schedule.]

(1) Hazardous waste schedule.

Figure: 30 TAC §335.325(j)(1)

[Figure: 30 TAC §335.325(j)(1)]

(2) Class 1 nonhazardous ~~[non-hazardous]~~ waste schedule.

Figure: 30 TAC §335.325(j)(2)

[Figure: 30 TAC §335.325(j)(2)]

(3) The executive director may adjust fees at or up to the fee specified in the fee schedule, on an annual basis.

(k) For wastes which are generated out-of-state, the fee will be that specified in subsection (j) of this section, except that the fee for the storage, processing, incineration, and disposal of hazardous waste fuels shall be the same for wastes generated out-of-state and in-state.

(l) Except as provided in subsection (m) of this section, only one waste management fee shall be paid for a waste managed at a facility. In any instance where more than one fee could be applied under this section to a specific volume of waste, the higher of the applicable fees will be assessed.

(m) A fee for storage of hazardous waste shall be assessed in addition to any fee for other waste management methods at a facility. No fee shall be assessed under this section for the storage of a hazardous waste for a period of less than 90 days as determined from the date of receipt or generation of the waste (or the effective date of this section). The fee rate specified in the schedule under subsection (j) of this section shall apply to the quantity of waste in any month which has been in storage for more than 90 days or the number for which an extension has been granted under §335.69 of this title.

(n) A facility which receives waste transferred from another facility shall pay any waste management fee applicable under this section and shall not receive credit for any fee applied to the management of the waste at the facility of origin.

(o) The fee rate for incineration of aqueous wastes containing 5.0% or less of total organic carbon will be 10% of the fee for incineration under the schedule in subsection (j) of this section.

(p) A commercial waste disposal facility receiving solid waste not subject to assessment under this section shall pay any assessment due under Chapter 330, Subchapter P of this title (relating to Fees and Reporting [Reports]). No fee for disposal of a solid waste under Chapter 330, Subchapter P of this title, shall be assessed in addition to a fee for disposal under this section.

(q) An operator of a hazardous waste injection well electing to separately measure inorganic salts in the determination of dry weight under the provisions of §335.326(c) of this title shall pay a fee equivalent to 20% of the fee for underground injection assessed in subsection (j) of this section for the components of the waste stream determined to be inorganic salts.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 21, 2021.

TRD-202102044

Robert Martinez

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: July 4, 2021

For further information, please call: (512) 239-2678

◆ ◆ ◆

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 9. TEXAS COMMISSION ON JAIL STANDARDS

#### CHAPTER 275. SUPERVISION OF INMATES

##### 37 TAC §275.3

The Commission on Jail Standards (TCJS) proposes a new §275.3, concerning temporary jailers. The proposed new rule adds §275.3 to 37 TAC. HB 4468, 87th legislative session, amended Occupations Code §1701.310(f) to prohibit a county jailer appointed on a temporary basis from being promoted to a supervisory position in a county jail. Current jail standards §275.2 requires jailer supervisors to be licensed but does not state clearly that temporary jailers may not supervise. The proposed rule will clarify explicitly that temporary jailers may not supervise other jailers and will make reference to Occupations Code §1701.310(f) as the statutory source of the rule.

Brandon S. Wood, Executive Director, has determined that for the first five-year period of this rule there is no foreseeable implication to the costs or revenues of state or local governments as a result of enforcing or administering the rule.

Mr. Wood has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules by ensuring that all jailer supervisors have the proper training and experience necessary to work within the Texas county jail system. Mr. Wood has also determined that this rule during each of the first five years of its effect will neither create nor eliminate a government program, will not require the creation of new employee positions or the elimination of existing employee positions, will not require an increase or decrease in future legislative appropriations to the agency, will not require an increase or decrease in fees paid to the agency, and will not increase or decrease the number of individuals subject to the rule's applicability. However, the new rule will expand existing regulation, which currently states only that a county jailer with a temporary license shall not be appointed as Jail Administrator or to any other supervisory position and shall not be assigned supervisory duties. Mr. Wood does not anticipate any cost to individuals, small businesses/micro-businesses or rural communities as a result of these rules for each year of the first five years of their effect.

Comments on the proposed rule may be submitted by June 11, 2021, to William Turner, P.O. Box 12985, Austin, Texas 78711, Fax (512) 463-3185, or e-mail at will.turner@tcjs.state.tx.us.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The proposed rule implements Occupations Code §1701.310(f).

##### §275.3. Temp Jailers May Not Supervise.

In accordance with Occupations Code §1701.310(f), a county jailer with a temporary license shall not be appointed as Jail Administrator or to any other supervisory position and shall not be assigned supervisory duties.

# Texas Commission on Environmental Quality



## ORDER ADOPTING AMENDED RULES

**Docket No. 2020-0032-RUL**

**Rule Project No. 2020-010-335-WS**

On November 3, 2021, the Texas Commission on Environmental Quality (Commission) adopted amended rules in 30 Texas Administrative Code Chapter 335, concerning Industrial Solid Waste and Municipal Hazardous Waste. The proposed rules were published for comment in the June 4, 2021 issue of the *Texas Register* (46 TexReg 3499).

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended rules are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The adopted rules and the preamble to the adopted rules are incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Tex. Gov't Code Ann., Chapter 2001 (West 2016).

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

---

Jon Niermann, Chairman

---

Date Signed