

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§336.356, 336.1301, 336.1305, 336.1307, 336.1309 - 336.1311, and 336.1317; and the repeal of §336.1313.

The amendments to §§336.356, 336.1301, 336.1305, 336.1307, 336.1309 - 336.1311, and 336.1317 and the repeal of §336.1313 are adopted *without changes* to the proposed text as published in the June 8, 2018, issue of the *Texas Register* (43 TexReg 3725) and, therefore, the sections will not be republished.

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

This rulemaking is adopted to ensure compatibility with federal regulations promulgated by the Nuclear Regulatory Commission (NRC) which is necessary to preserve the status of Texas as an Agreement State under 10 Code of Federal Regulations (CFR) Part 150 and under the "Articles of Agreement between the United States Atomic Energy Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended." In most cases, rules which are designated by the NRC as compatibility items must be adopted by an Agreement State within three years of the effective date of the NRC rules. Additionally, Texas Health and Safety Code (THSC), §401.245, requires the TCEQ to periodically revise party state compact waste disposal fees. The adopted rulemaking also adjusts the surcharge fees for compact waste disposal and remove the annual requirement for rate adjustment for disposal of Low-Level Radioactive Waste (LLRW) to allow flexibility to incorporate rate adjustments on an as-needed basis.

### **Section by Section Discussion**

The commission adopts non-substantive changes to update the rules in accordance with current *Texas Register* style and format requirements, improve readability, and establish consistency in the rules. These non-substantive changes are not intended to alter the existing rule requirements in any way and are not specifically discussed in this preamble.

#### *§336.356, Soil and Vegetation Contamination Limits*

The commission adopts amended §336.356(c) to add the requirement that the licensees shall, to the extent practical, conduct operations to minimize the introduction of residual radioactivity into the site, including the subsurface.

#### *§336.1301, Purpose and Scope*

The commission adopts amended §336.1301(a) to remove the sentence that the compact waste disposal facility (CWF) is expected to be the sole facility for disposal of LLRW for generators within the states of Texas and Vermont.

The commission adopts amended §336.1301(b) to clarify that the commission will establish the maximum disposal rates charged by the licensee for disposal of party state compact waste.

The commission adopts amended §336.1301(c) to make minor clarifying changes.

*§336.1305, Commission Powers*

The commission adopts amended §336.1305(a) to clarify that the rates that the commission adopts are the maximum disposal rates for disposal of party state compact waste at the CWF and to also update the language from "establishing" to "determining."

The commission adopts amended §336.1305(c) to change the rates from "initial" to "new" or "revised."

The commission adopts amended §336.1305(e)(2) to correct a cross-reference.

The commission adopts amended §336.1305(f) to delete the word "initial" relating to rate application or revision because it is no longer needed.

The commission deletes and moves §336.1305(h) ("Initiation of rate revision by the executive director") to adopted §336.1311(d) with modifications as discussed later in this preamble.

*§336.1307, Factors Considered for Determination of Maximum Disposal Rates*

The commission modifies the title of §336.1307 by adding the words "Determination of" to clarify that this section is about the determination of the maximum disposal rates.

The commission adopts amended §336.1307(1) to remove the word "finality" from the phrase "compact waste disposal finality services."

*§336.1309, Procedures for Determination of New and Revised Rates and Fees*

The commission modifies the title of §336.1309 by adding the words "Procedures for" and "New and Revised" and deleting the word "Initial" to clarify the contents of this section.

The commission adopts amended §336.1309(a) to change the applicability of this section from "initial" rates and fees to "new or revised" rates and fees.

The commission adopts §336.1309(a)(2) to add the requirement that a licensee filing a rate application shall use the data in the submitted application and sustain the burden of proof that the proposed rate changes are just and reasonable and to also add the requirement that the data in the rate application may be modified only on a showing of good cause. The subsequent paragraphs are renumbered accordingly.

The commission adopts renumbered §336.1309(a)(3) to remove the requirement that the executive director recommend one or more rates to the commission for approval and to also add the requirement that the licensee has 20 days to provide information if requested by the executive director, unless a different time is agreed upon.

The commission adopts §336.1309(a)(4) to add that the commission may disallow unsupported costs or expenses in the application if the necessary documentation or other evidence supporting these costs or expenses are not provided within a reasonable time.

The commission adopts renumbered §336.1309(a)(5) to add the requirement that the licensee file with the commission proof of notice in the form of an affidavit stating that proper notice was mailed and the date of such mailing.

The commission adopts renumbered §336.1309(a)(6) to add the requirement of providing notice of the licensee's proposed rates by publication in the *Texas Register*.

The commission adopts amended §336.1309(b) to remove the applicability of this section from "initial" maximum disposal rates and to also clarify that the generator is a "party state" generator.

The commission adopts amended §336.1309(c) and (d) to clarify that the generator is a "party state" generator.

The commission removes §336.1309(e) and (f) concerning initial rate proceedings, because they are no longer needed. The subsequent subsection is re-lettered accordingly.

The commission adopts re-lettered §336.1309(e) to replace "initial" with "new or revised" maximum disposal rates and to also delete "volume adjustment" because it is no longer needed.

#### *§336.1310, Rate Schedule*

The commission adopts amended Figure: 30 TAC §336.1310. The base disposal charge for

waste volume is amended to reflect that Class A LLW charges are \$100 per cubic foot regardless of Routine or Shielded classification; the waste charge for sources is only for Class A sources; and delete the biological waste charge. The base disposal charge for radioactivity is amended by changing the curie inventory charge from \$0.55 per millicurie (mCi) to \$0.40 per mCi and to also delete the charges for carbon-14 inventory and for special nuclear material. The surcharges to the base disposal charge is amended to change the weight surcharge by removing the surcharge category of 10,000 to 50,000 pounds; to change the dose rate surcharge by removing the charges for one to five roentgen (R) per hour, greater than five to 50 R per hour, and greater than 50 to 100 R per hour; changing the category of greater than 100 R per hour to greater than 500 R per hour; and, to remove the cask (shielded waste) surcharge of \$2,500 per cask.

*§336.1311, Revisions to Maximum Disposal Rates*

The commission adopts amended §336.1311(a) to clarify that the generator is a "party state" generator and to also clarify that rates are for disposal services at the CWF.

The commission adopts §336.1311(b) to add that the maximum disposal rate may be adjusted at the request of the licensee to incorporate inflation adjustments and establishes the methodology of determining the amount of the inflation adjustment. The subsequent subsections are re-lettered accordingly.

The commission deletes existing §336.1311(b) to remove the requirement that the maximum disposal rate shall be the initial rate because this is no longer needed.

The commission deletes existing §336.1311(c) to remove the requirement that the maximum disposal rate be adjusted every January to incorporate inflation and volume adjustments because this is no longer needed.

The commission adopts §336.1311(d) (which is a modified version of deleted §336.1305(h)) to add language that the executive director may initiate revisions to the maximum disposal rates if good cause exists. The subsequent subsections are re-lettered accordingly.

The commission adopts §336.1311(d)(1) - (3) to add language to outline examples of good cause circumstances.

The commission adopts §336.1311(e) to add the ability of one or more party state generators to petition the executive director to initiate a revision to the maximum disposal rate and establishes the procedures for the executive director's review of this petition. The subsequent subsections are re-lettered accordingly.

The commission adopts re-lettered §336.1311(f) to exclude inflation adjustments from the requirement that an application for revisions to the maximum disposal rate meet the requirements in §336.1309(a) and (b) and to also change when the licensee must provide notice to its customers about revisions to the maximum disposal rate from any revision to only when it is due to an inflation adjustment.

The commission adopts §336.1311(g) to move the language concerning computing allowable expenses to be its own subsection.

The commission deletes existing §336.1311(f) because it is no longer needed.

*§336.1313, Extraordinary Volume Adjustment*

The commission adopts the repeal of §336.1313 concerning extraordinary volume adjustments, as this rule is obsolete and it is no longer needed.

*§336.1317, Contracted Disposal Rates*

The commission adopts amended §336.1317(a) to change who the licensee may contract with from "any person" to a "party state generator."

**Final Regulatory Impact Analysis Determination**

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in the Texas Administrative Procedure Act. A "Major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.



This adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because it is not the specific intent of the adopted rules to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the adopted rulemaking is to ensure that §336.356(c) is compatible with federal regulations promulgated by the NRC, to adjust the surcharge fees for compact waste disposal, to remove the annual requirement for rate adjustment for disposal of LLRW, and to amend language for clarity and conciseness.

Further, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The cost of complying with the adopted rulemaking is not expected to be significant with respect to the economy as a whole or as a sector of the economy; therefore, the adopted rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

Furthermore, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) 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 adopted rulemaking does not meet the four applicability requirements because the adopted rules: 1) do not exceed a standard set by federal law; 2) do not exceed an express requirement of state law; 3) do not exceed a requirement of federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program as no such federal delegation agreement exists with regard to the adopted rules; and 4) are not adopted solely under the general powers of the agency, but specifically under THSC, §401.425, which requires the commission to periodically revise party state compact waste disposal fees; and to ensure compatibility with federal regulations promulgated by the NRC.

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 this adopted rulemaking and performed an assessment of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission adopts this rulemaking for the specific purposes of ensuring that §336.356(c) is compatible with federal regulations promulgated by the NRC, adjusting the surcharge fees for compact waste disposal, removing the annual requirement for rate adjustment for disposal of LLRW, and amending language for clarity and conciseness. The

adopted rulemaking substantially advances these stated purposes by adopting rules that incorporate NRC regulations requiring a licensee to minimize the introduction of residual radioactivity into a site, including the subsurface, and that are consistent with the waste disposal fee requirements in THSC, §401.245.

The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to the portions of the rulemaking adopting rules that meet the minimum standards of the federal regulations promulgated by the NRC because Texas Government Code, §2007.003(b)(4) exempts an action reasonably taken, by a state agency, to fulfill an obligation mandated by federal law from the requirements of Texas Government Code, Chapter 2007. Under 10 CFR Part 150 and under the "Articles of Agreement between the United States Atomic Energy Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended," the state must adopt rules designated by NRC as "compatibility items" to maintain its Agreement State status. Therefore, the portions of the rulemaking adopting rules that meet the minimum standards of the NRC's regulations are exempt from the requirements of Texas Government Code, Chapter 2007 because the rules are required by federal law.

Nevertheless, the commission evaluated the entirety of the adopted rulemaking and performed an assessment of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. Because no taking of private real property would occur by ensuring consistency with NRC regulations requiring a licensee to minimize the

introduction of residual radioactivity into a site, including the subsurface; amending the surcharge fees for compact waste disposal; removing the annual requirement for rate adjustment for disposal of LLRW; and amending language for clarity and conciseness, the commission has determined that promulgation and enforcement of this adopted rulemaking is neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rules because the adopted rulemaking neither relates to, nor has any impact on, the use or enjoyment of private real property, and there is no reduction in real property value as a result of the rulemaking. Therefore, the adopted rulemaking does not constitute a taking under Texas Government Code, Chapter 2007.

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

The commission reviewed the adopted rulemaking 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 adopted rulemaking is not subject to the Texas Coastal Management Program (CMP).

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

### **Public Comment**

The commission offered a public hearing on June 28, 2018. The comment period closed on

July 10, 2018. One comment was received from the United State Nuclear Regulatory Commission (NRC).

### **Response to Comments**

#### *Comment*

The NRC commented that §336.356(c) meets compatibility requirements.

#### *Response*

**The commission appreciates the comment. No changes have been made in response to this comment.**

## **SUBCHAPTER D: STANDARDS FOR PROTECTION AGAINST RADIATION**

### **§336.356**

#### **Statutory Authority**

The amendment is adopted under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401, §401.011, which provides the commission the authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.151, which authorizes the commission to ensure that the management of low-level radioactive waste is compatible with applicable federal commission standards; THSC, §401.412, which provides authority to the commission to regulate licenses for the disposal of radioactive substances; and 10 Code of Federal Regulations (CFR) Part 150 which is necessary in order to preserve Texas as an Agreement State pursuant to 10 CFR Part 150. The rulemaking is also adopted as authorized by Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and TWC, §5.103, which establishes the commission's general authority to adopt rules.

The adopted amendment implements THSC, Chapter 401, and is adopted to meet compatibility standards set by the United States Nuclear Regulatory Commission.

#### **§336.356. Soil and Vegetation Contamination Limits.**

(a) No licensee may possess, receive, use, or transfer licensed radioactive material in such a manner as to cause contamination of soil or vegetation in unrestricted areas that causes a member of the public to receive a total effective dose equivalent in excess of 25 millirem (mrem)/year from all pathways (excluding radium and its decay products) and to the extent that the contamination exceeds the background level by more than:

(1) for radium-226 or radium-228 in soil, the following limits, based on dry weight, averaged over any 100 square meters of area:

(A) 5 picocuries/gram (pCi/g), averaged over the first 15 centimeters of soil below the surface;

(B) 15 pCi/g, averaged over each 15-centimeter thick layer of soil below the first 15 centimeters below the surface; and

(2) for radium-226 or radium-228 in vegetation, 5 pCi/g, based on dry weight.

(b) Regardless of the limits set forth in subsection (a) of this section, each licensee shall make every reasonable effort to maintain any contamination of soil or vegetation as low as is reasonably achievable.

(c) Licensees shall, to the extent practical, conduct operations to minimize the introduction of residual radioactivity into the site, including the subsurface in accordance with the existing radiation protection requirements in §336.304 of this title (relating to Radiation Protection Programs) and radiological criteria for license termination in Subchapter G of this chapter (relating to Decommissioning Standards). If contamination caused by the licensee is detected in an unrestricted area, the licensee shall decontaminate any unrestricted area which is contaminated above the limits specified in subsection (a) of this section.



**SUBCHAPTER N: FEES FOR LOW-LEVEL RADIOACTIVE WASTE DISPOSAL**

**§§336.1301, 336.1305, 336.1307, 336.1309 - 336.1311, 336.1317**

**Statutory Authority**

The amendments are adopted under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), §401.011, which provides the commission the authority to regulate and license the disposal of radioactive substances; and THSC, §401.245, which requires the commission, by rule, to adopt and periodically revise party state compact waste disposal fees. The adopted amendment is also authorized by Texas Water Code (TWC), §5.103, which establishes the commission's general authority to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state.

The adopted amendments implement THSC, §401.245.

**§336.1301. Purpose and Scope.**

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

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

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

**§336.1305. Commission Powers.**

(a) The commission shall adopt maximum disposal rates for disposal of party state compact waste at the compact waste disposal facility. In determining the rates, the commission shall ensure that they are fair, just, reasonable, and sufficient considering the value of the licensee's real property and license interests, the unique nature of its business operations, the licensee's liability associated with the site, its investment incurred over the

term of its operations, and the reasonable rate of return equivalent to that earned by comparable enterprises.

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

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

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

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

(1) To achieve the purposes, proper administration, and enforcement of this chapter, the executive director may conduct audits or investigations of waste disposal rates,

payments and fees authorized by Texas Health and Safety Code, Chapter 401, and the veracity of information submitted to the commission.

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

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

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

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

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

(1) allow the licensee to recover allowable expenses. Allowable expenses shall never include: legislative advocacy expenses; political expenditures or contributions; expenses in support of or promoting political movements, or political or religious causes; funds expended for membership in or support of social, fraternal, or religious clubs or organizations; costs, including interest expense, of processing a refund or credit ordered by

the commission; or any expenditure found by the commission to be unreasonable, unnecessary or against public interest, including but not limited to, executive salaries, legal expenses, penalties, fines, or costs not used or useful for the provision of compact waste disposal services;

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

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

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

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

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

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

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

**§336.1309. Procedures for Determination of New and Revised Rates and Fees.**

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

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

(2) A licensee filing a rate application shall be prepared to go forward at the hearing on the data which has been submitted in its application and sustain the burden of proof establishing that its proposed changes are just and reasonable. The data in the rate application may be modified only on a showing of good cause.

(3) After receipt of the application, the executive director shall review the application and evaluate the rate information. The executive director may request additional information from the licensee and the licensee shall provide that information within 20 days of receipt of request, unless a different time is agreed to.

(4) If the licensee fails to provide, within a reasonable time after the application is filed, the necessary documentation or other evidence that supports the costs and expenses that are shown in the application, the commission may disallow the unsupported costs or expenses.

(5) The licensee shall provide notice of the application to all known customers that will ship or deliver waste to the compact waste disposal facility and shall provide notice of the application to any person by any method as directed by the executive director. The licensee shall file with the commission proof of notice in the form of an affidavit stating that proper notice was mailed and the date of such mailing.

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

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



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

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

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

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

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

**§336.1310. Rate Schedule.**

Fees charged for disposal of party state compact waste must be equal to or less than the compact waste disposal fees under this section. Additionally, fees charged for disposal of nonparty compact waste must be greater than the compact waste disposal fees under this section.

**Figure: 30 TAC §336.1310**

**Disposal Rate for the Compact Waste Disposal Facility**

**1. Base Disposal Charge:**

<b>1A. Waste Volume Charge</b>	Charge per cubic foot (\$/ft <sup>3</sup> )
Class A LLW	\$100
Class B and C LLW	\$1,000
Sources - Class A	\$500

<b>1B. Radioactivity Charge</b>	
Curie Inventory Charge (\$/millicurie (mCi))	\$0.40
Maximum Curie Charge (per shipment) (excluding C-14)	\$220,000/shipment

**2. Surcharges to the Base Disposal Charge:**

<b>2A. Weight Surcharge - Weight (lbs.) of Container</b>	Surcharge (\$/container)
Greater than 50,000 lbs	\$20,000

<b>2B. Dose Rate Surcharge - Surface Dose Rate (R/hour) of Container</b>	Surcharge per cubic foot (\$/ft <sup>3</sup> )
Greater than 500 R/hour	\$400

<b>2C. Irradiated Hardware Surcharge</b>	
Surcharge for special handling per shipment	\$75,000/shipment

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

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

(b) The maximum disposal rates may be adjusted at the request of the licensee to incorporate inflation adjustments. If an inflation adjustment is requested, the maximum disposal rates shall be adjusted by a percentage equal to the change in price levels in the preceding period. The adjustment shall be made using an inflation factor derived from the most recent annual Implicit Price Deflator for Gross National Product published by the United States Department of Commerce in its Survey of Current Business.

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

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

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

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

(d) The executive director may initiate revisions to the maximum disposal rates established under this subchapter if good cause exists. Good cause includes, but is not limited to:

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

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

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

(e) One or more party state generators may petition the executive director to initiate a revision to a maximum disposal rate under the requirements of this section. The party state

generator must provide a copy of the petition to the licensee at the time the petition is submitted to the executive director. The executive director shall grant or deny the petition within 90 days of filing, or request more information from the petitioner. The party state generator must provide a detailed and complete explanation of the existence of the good cause that is the basis of the petition. The executive director's decision on a petition filed under this paragraph is subject to a motion to overturn filed with the commission under Chapter 50 of this title (relating to Actions on Applications and Other Authorizations).

(f) For revisions to maximum disposal rates, excluding inflation adjustments, the application must meet the requirements in §336.1309(a) and (b) of this title (relating to Procedures for Determination of New and Revised Rates and Fees). For revisions to maximum disposal rates due to an inflation adjustment, the licensee shall provide notice to its customers consistent with §336.1309(a)(5) of this title.

(g) In computing allowable expenses for revisions to maximum disposal rates, only the licensee's test year expenses as adjusted for known and measurable changes will be considered.

#### **§336.1317. Contracted Disposal Rates.**

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

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

## **SUBCHAPTER N: FEES FOR LOW-LEVEL RADIOACTIVE WASTE DISPOSAL**

### **Statutory Authority**

This repeal is adopted under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), §401.011, which provides the commission the authority to regulate and license the disposal of radioactive substances; and THSC, §401.245, which requires the commission, by rule, to adopt and periodically revise party state compact waste disposal fees. The adopted repeal is also authorized by Texas Water Code (TWC), §5.103, which establishes the commission's general authority to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state.

The adopted repeal implements THSC, §401.245.