

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

The amendment to §336.103 is adopted *without change* to the proposed text as published in the February 3, 2017, issue of the *Texas Register* (42 TexReg 409), and therefore will not be republished.

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

Section 336.103(c) requires a holder of a license for a low-level radioactive waste disposal site issued under Chapter 336, Subchapter H, to pay an annual license fee for the services received from TCEQ. The rulemaking would remove the word "quarterly" to allow flexibility for the Radioactive Materials Division and the Financial Administration Division to invoice cost recoverable activities by TCEQ on an as-needed basis.

### **Section Discussion**

The commission adopts the amendment to §336.103(c) to remove the word "quarterly" where the rule requires the executive director to invoice for the amount of recoverable cost activities incurred on a quarterly basis.

### **Final Regulatory Impact Determination**

The commission reviewed the adopted rulemaking in light of the regulatory analysis

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

This rulemaking does not meet the statutory definition of a "major environmental rule" because it is not the specific intent of the rule amendment to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the adopted rulemaking is to reduce the reporting of cost recovery activities from quarterly to annually relating to permitting activities, simply because these activities have been reduced since the operations and license of the low-level radioactive disposal facility license was issued and license amendments are less frequent.

Further, the rulemaking does not meet the statutory definition of a "major environmental rule" because the adopted rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The cost of complying with the adopted amendment is not expected to be significant with respect to the economy as a whole or 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). This section only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The adopted rulemaking does not meet the four applicability requirements, because the adopted amendment: 1) does not exceed a standard set by federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program as no such federal delegation agreement exists with regard to the adopted rule; and 4) is not an adoption of a rule solely under the general powers of the commission.

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 adopted this rulemaking for the specific purpose of conforming the language of a rule to the current state of licensing activities and the necessity for cost recovery since the low-level radioactive waste disposal facility commenced operations and license amendments have become less frequent.

A "taking" under Texas Government Code, Chapter 2007 means a governmental action that affects private real property in a manner that requires compensation to the owner under the United States or Texas Constitution, or a governmental action that affects real private property in a manner that restricts or limits the owner's right to the property and reduces the market value of affected real property by at least 25%. Because no taking of private real property would occur by altering the schedule of reporting cost recovery to an annual reporting from a quarterly reporting schedule, the commission has determined that promulgation and enforcement of this adopted rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rule because the adopted rulemaking neither relates to, nor has any impact on, the use or enjoyment of private real property, and there would be no reduction in real property value as a result of the rulemaking. Therefore, the adopted rulemaking would

not constitute a taking under Texas Government Code, Chapter 2007.

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

The commission reviewed the adopted rule and found it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule 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 February 27, 2017. The comment period closed on March 6, 2017. No comments were received.

## **SUBCHAPTER B: RADIOACTIVE SUBSTANCE FEES**

### **§336.103**

#### **Statutory Authority**

The amendment is adopted under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances; and THSC, §401.245, which requires the commission, by rule, to adopt and periodically revise party state compact waste disposal fees. The adopted amendment is also authorized by Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state.

The adopted amendment revises the language to create reduced reporting of cost recovery of license amendment activities from quarterly to annually in order to conform to the current state of licensing activities since the low-level radioactive waste disposal facility commenced operations and license amendments have become less frequent.

#### **§336.103. Schedule of Fees for Subchapter H Licenses.**

(a) An application for a low-level radioactive waste disposal site license under Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) shall be accompanied by a nonrefundable

application processing fee of \$500,000. If the commission's costs in processing an application under Subchapter H of this chapter exceed the \$500,000 application processing fee, the commission may assess and collect additional fees from the applicant to recover the costs. Recoverable costs include costs incurred by the commission for administrative review, technical review, and hearings associated with the application.

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

(c) A holder of a license for a low-level radioactive waste disposal site issued under Subchapter H of this chapter shall submit an annual license fee for the services received. This fee shall recover for the state the actual expenses arising from the regulatory activities associated with the license. This fee shall include reimbursement for the salary and other expenses of the resident inspectors as provided by §336.743 of this title (relating to Resident Inspector). The executive director shall invoice for the amount of the costs incurred. Payment shall be made within 30 days following the date of the invoice.

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

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

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

(g) The compact waste disposal facility license holder shall remit directly to the host county 5% of the gross receipts from compact waste received at the compact waste disposal facility and any federal facility waste received at the federal facility waste disposal facility as required in Texas Health and Safety Code, §401.244. Payment shall be made within 30 days of the end of each quarter. The end of each quarter is the last day of the months of November, February, May, and August.