

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

The amendment to §336.103 is adopted *without change* to the proposed text as published in the November 17, 2017, issue of the *Texas Register* (42 TexReg 6480) and, therefore, will not be republished.

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

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

### **Section Discussion**

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

The commission adopts an amendment to §336.103(f) to remove the 5% gross receipts fee. The adopted amendment removes subsection (f) and re-letters subsection (g), accordingly.

### **Final Regulatory Impact Analysis**

The commission adopts the rulemaking action under the regulatory analysis

requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the statute. A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendment to Chapter 336 is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because this revision is required for TCEQ to comply with legislation requiring a two-year suspension of this fee for the biennium beginning September 1, 2017.

Furthermore, the adopted rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The adopted

rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency.

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

#### **Takings Impact Assessment**

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

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

The commission reviewed the 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 regarding the CMP.

### **Public Comment**

The commission offered a public hearing on December 12, 2017. The comment period closed on December 22, 2017. No comments were received regarding this rulemaking.

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

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

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

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

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

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

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

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

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

(f) The compact waste disposal facility license holder shall remit 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.