

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §336.1310, *without change* to the proposed text as published in the November 7, 2014, issue of the *Texas Register* (39 TexReg 8682); and therefore will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

Texas Health and Safety Code (THSC), §401.245, requires the commission by rule to adopt and periodically revise party state compact waste disposal fees.

On June 19, 2014, Waste Control Specialists (WCS) submitted a volume adjustment request to the commission to calculate the annual volume adjustment to the low-level radioactive waste (LLRW) disposal rates charged at the Compact Waste Disposal Facility in Andrews County, Texas. WCS' volume adjustment proposes to reduce the disposal rate for Class A Low-Level Waste (LLW) - Shielded from \$250 per cubic foot to \$180 per cubic foot. After a review of WCS' request, staff agrees that this change in rate is necessary in order to reflect material changes to the volume of waste expected to be received at the Compact Waste Disposal Facility. Accordingly, the executive director (ED) initiated a rate revision to lower the maximum disposal rate for Class A LLW - Shielded to \$180 per cubic foot.

On July 18, 2014, the ED published notice of the proposed rate change in the *Texas Register* (39 TexReg 5635). Additionally, on July 22, 2014, WCS mailed the notice to all

known customers that will ship or deliver waste to the Compact Waste Disposal Facility. The proposed rate change was subject to a contested case hearing if a party state generator requested one. TCEQ did not receive a request for a contested case hearing. Therefore, pursuant to §336.1305(g), the ED approved the reduction in rate for the Class A LLW - Shielded as an uncontested matter.

THSC, §401.245 requires the commission to adopt the maximum disposal rates by rule. Therefore, an expedited rulemaking is necessary in order for this rate change to become effective and reflected in the rate schedule established in §336.1310. This rulemaking would amend §336.1310 by reducing the maximum disposal rate for Class A LLW - Shielded.

Section Discussion

§336.1310, Rate Schedule

The commission adopts an amendment to §336.1310 that will reduce the maximum disposal rate that a licensee may charge party-state generators for disposal of Class A LLW - Shielded waste.

Final Regulatory Impact Analysis 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 amend the LLRW maximum disposal rate that a licensee may charge for disposal of Class A LLW - Shielded waste.

Further, the rulemaking does not meet the statutory definition of a "major environmental rule" because the adopted amendment 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 as the adopted amendment is required by THSC, §401.245.

The commission invited public comment of the draft regulatory impact analysis determination during the public comment period. The commission did not receive any comment regarding the 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 amending the LLRW maximum disposal rate that a licensee may charge for disposal of Class A LLW - Shielded waste. The adopted rulemaking amends §336.1310. The commission's analysis revealed that amending this rule section would achieve consistency with THSC, §401.245. Amended §336.1310 would reduce the maximum rate that a licensee may charge a party state generator for disposal of Class A LLW - Shielded waste.

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 amending the maximum disposal rate that a licensee may charge a party state generator for disposal of Class A LLW - Shielded waste, 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 that 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 held a public hearing on December 4, 2014, at 10:00 a.m. in Austin, Texas, at the commission's central office located at 12100 Park 35 Circle. The comment period closed on December 8, 2014. The commission received comments from WCS and Energy Solutions during the comment period.

Response to Comments

A comment from WCS stated its support of the amended rule without changes.

A comment from Energy Solutions asked for the terms Class A LLW - Routine and Class A LLW - Shielded to be defined in the rulemaking. The commission responds that additional definitions are not necessary. The commission considers Class A LLW - Shielded to be defined as Containerized Class A waste. Containerized Class A waste is defined in §336.702(7) as "Class A low-level radioactive waste which presents a hazard because of high radiation level. High radiation levels are radiation levels from an unshielded container that could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 millisievert) in one hour at 30 centimeters from any surface of the container that the radiation penetrates." The commission considers Class A LLW - Routine to be all other Class A waste which does not meet that definition.

SUBCHAPTER N: FEES FOR LOW-LEVEL RADIOACTIVE WASTE DISPOSAL

§336.1310

Statutory Authority

The amendment is adopted under the Texas Radiation Control Act, Texas Health and Safety Code (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 implements THSC, §401.245.

§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:

| 1A. Waste Volume Charge | Charge per cubic foot (\$/ft ³) |
|--------------------------------|---|
| Class A LLW - Routine | \$100 |
| Class A LLW - Shielded | <u>\$180</u> [\$250] |
| Class B and C LLW | \$1,000 |
| Sources | \$500 |
| Biological Waste (Untreated) | \$350 |

| 1B. Radioactivity Charge | |
|--|--------------------|
| Curie Inventory Charge (\$/mCi) | \$0.55 |
| Maximum Curie Charge (per shipment) (excluding C-14) | \$220,000/shipment |
| Carbon-14 Inventory Charge (\$/mCi) | \$1.00 |
| Special Nuclear Material Charge (\$/gram) | \$100 |

2. Surcharges to the Base Disposal Charge:

| 2A. Weight Surcharge - Weight (lbs.) of Container | Surcharge (\$/container) |
|--|--------------------------|
| 10,000 to 50,000 lbs | \$10,000 |
| Greater than 50,000 lbs | \$20,000 |

| 2B. Dose Rate Surcharge - Surface Dose Rate (R/hour) of Container | Surcharge per cubic foot (\$/ft ³) |
|--|--|
| 1-5 R/hour | \$100 |
| Greater than 5 to 50 R/hour | \$200 |
| Greater than 50 to 100 R/hour | \$300 |
| Greater than 100 R/hour | \$400 |

| 2C. Irradiated Hardware Surcharge | |
|---|-------------------|
| Surcharge for special handling per shipment | \$75,000/shipment |

| 2D. Cask (Shielding Waste) Surcharge | |
|---|--------------|
| Cask handling surcharge per cask | \$2,500/cask |