

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** January 16, 2015

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: Brent Wade, Deputy Director
Office of Waste

Docket No.: 2014-1080-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 336, Radioactive Substance Rules
Maximum Disposal Rates - Amend §336.1310
Rule Project No. 2014-031-336-WS

Background and reason(s) for the rulemaking:

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 November 6, 2013, the Texas Commission on Environmental Quality (TCEQ or commission) adopted the maximum disposal rates by rule in 30 Texas Administrative Code (TAC) §336.1310.

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*. 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 that was adopted by rule in §336.1310.

Scope of the rulemaking:

Amended §336.1310 would reduce the maximum disposal rate that a licensee may charge generators for disposal of Class A LLW - Shielded.

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A.) Summary of what the rulemaking will do:

Amended §336.1310 would reduce the maximum disposal rate that a licensee may charge generators for disposal of Class A LLW - Shielded from \$250 per cubic foot to \$180 per cubic foot.

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

Federal regulations do not apply to this rulemaking. THSC, §401.245 requires the commission by rule to adopt and periodically revise party state compact waste disposal fees.

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

None. This rulemaking is required in both Texas statute and TCEQ rules.

Statutory authority:

THSC, §401.245

Effect on the:

A.) Regulated community:

Both the licensee and generators of LLRW will be affected. The disposal rates serve as a floor for rates charged by the licensee to nonparty generators and the ceiling for rates charged to party state generators for disposal of LLRW.

B.) Public:

There is no direct impact to the public.

C.) Agency programs:

Rate fee schedule forms will need to be updated.

Stakeholder meetings:

There were no stakeholder meetings associated with this rulemaking; however, there was a public hearing for this rulemaking on December 4, 2014, in Austin, Texas.

Public comment:

The commission received two written comments. One comment from Waste Control Specialists stated its support of the new rule without changes. One 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 30 TAC §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

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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 the above definition.

Significant changes from proposal:

There were no changes to this rule from proposal.

Potential controversial concerns and legislative interest:

The notice of the maximum disposal rate change that was published in the *Texas Register* and mailed to all known customers that will ship or deliver waste to the Compact Waste Disposal Facility included an opportunity to request a contested case hearing. The TCEQ did not receive any requests for a hearing.

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

No.

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

This rulemaking is required in both Texas statute and TCEQ rules. THSC, §401.245 requires the commission to adopt the maximum disposal rates by rule. If this rulemaking does not go forward, the proposed rate change for disposal of Class A LLW - Shielded will not become effective or reflected in the rate schedule established by rule in §336.1310. There are no other alternatives to this rulemaking that will satisfy the requirements set forth in the law.

Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** November 7, 2014

Anticipated *Texas Register* adoption publication: February 20, 2015

Anticipated effective date: February 26, 2015

Six-month *Texas Register* filing deadline: May 7, 2015

Agency contacts:

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Attachments

None.

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