

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners

**Date:** April 20, 2016

**Thru:** Richard A. Hyde, P.E., Executive Director

**Thru:**  Brent Wade, Deputy Director  
Office of Waste

**From:**  Charles Maguire, Division Director  
Radioactive Materials 

**Subject:** Rulemaking Draft Concept and Initiation Memo  
Chapter 336, Radioactive Substances Rules

**Suggested short title:** Frequency of Rate Adjustments - Disposal of LLRW

### **Introduction and reason(s) for the rulemaking:**

Texas Health and Safety Code (THSC), §401.245, requires the Texas Commission on Environmental Quality (TCEQ, agency, or commission) by rule to adopt and periodically revise party state compact waste disposal fees. On November 6, 2013, the TCEQ adopted the maximum disposal rates by rule in 30 Texas Administrative Code (TAC) §336.1310.

Section 336.1311 currently requires annual rulemaking to incorporate inflation and volume adjustments. TCEQ staff have determined that annual rate adjustments are not warranted and should be done on an as needed basis with concurrence from affected regulated entities.

### **Scope of the proposed rule:**

The proposed rulemaking would amend §336.1311 by removing the annual requirement for rate adjustment for disposal of Low-Level Radioactive Waste (LLRW) and allow flexibility to incorporate rate adjustments into rule on an as needed basis.

Additionally, the rulemaking also amends language in 30 TAC §§336.1301, 336.1305, 336.1307, 336.1309, 336.1310, 336.1313, and 336.1317 to add clarity and remove obsolete language.

### **Potential controversial concerns and legislative interest:**

No controversial concerns or legislative interest have been identified.

### **Potential alternatives:**

The commission could decide to not revise Chapter 336, Subchapter N rules. However, staff recommended changes are needed for clarity and consistency to fee structure integrity over time.

**Effect on the:**

**A) Regulated community:**

Both 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. Amending §336.1311 will allow for increased flexibility when rate adjustments are incorporated into rule.

**B) Public:**

There is no direct impact to the public anticipated with this rulemaking.

**C) Agency programs:**

There is no direct impact to other agency programs with this rulemaking.

**Proposed schedule and constraints:**

Anticipated Proposal Date: August 3, 2016

Anticipated Public Comment Period: August 19, 2016 - September 19, 2016

Anticipated Adoption Date: November 16, 2016

**Planned stakeholder involvement:**

A stakeholder meeting is not scheduled for this rulemaking; however, a public hearing will be held during the rulemaking public comment period.

**Statutory authority:**

This rulemaking is proposed 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 proposed rulemaking 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.

**Direction and Guidance:**

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**Rule or Non-Rule Project number: 2016-034-336-WS**

Electronic cc: Stephanie Bergeron Perdue  
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Barbara Robinson  
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attachments:

None

***NOTE:*** *TR will submit electronic notice to the following after ED Briefing:*

Marshall Coover  
Erin Chancellor  
Stephen Tatum  
Jim Rizk  
Office of General Counsel