

## **1 Introduction and Purpose**

This procedure establishes an updated, streamlined process for submittal, review, and monitoring of nonparty low level radioactive waste disposal contracts in compliance with Tex. Health and Safety Code 401.2456 pertaining to such contracts.

### ***1.1 Overview of Procedure***

This updated procedure is expected to be more efficient for both TCEQ and the license holder and facilitate more accurate assessments of contract compliance. The new procedure will allow the license holder to enter into and amend its contracts more quickly, which will allow greater responsiveness to its customers' needs and market conditions.

Under this updated procedure, detailed review of contract elements by TCEQ based on estimates of projected waste characteristics prior to those contracts becoming effective is curtailed. The license holder will use the data generated as waste is actually shipped and disposed to perform on-going compliance monitoring, and submit reports based on that data to demonstrate on-going compliance to the TCEQ executive director on a quarterly basis.

### ***1.2 Statutory Framework***

This procedure implements Tex. Health and Safety Code 401.2456.

## **2 Contracts Covered by this Procedure**

This procedure governs the submittal of contracts or amendments that include low level radioactive waste disposal of nonparty compact waste in the compact waste disposal facility, and every amendment to such a contract, i.e., those contracts that are subject to Tex. Health and Safety Code 401.2456. Contracts that do not include disposal in the compact waste disposal facility need not be submitted under this procedure, even if they include processing of low level radioactive waste for subsequent disposal elsewhere. If an amendment adds low level radioactive waste disposal in the compact waste disposal facility to a contract which did not previously include such disposal, then it must be submitted along with the original contract and all prior amendments.

In addition to contracts or amendments that directly provide for the disposal of nonparty low level radioactive waste, this procedure also governs the submittal of contracts or amendments with trade alliance groups, where those contracts or amendments set the general terms or prices pertaining to disposal of nonparty low level radioactive waste that the license holder will offer to specified trade alliance members. However, it is recognized that trade alliance contracts, by their nature, will not include all contract elements included for individual contracts. The license holder will submit additional relevant information for monitoring compliance with Tex. Health and Safety Code 401.2456 upon the request of the TCEQ. *If a contract or amendment is entered pursuant to such a contract with a trade alliance group, the Certification submitted with the contract or amendment must so indicate and identify the applicable trade alliance group contract.*

## **3 Contract / Amendment Submittal**

Prior to the effective date of a contract or amendment governed by this procedure, the license holder shall submit that contract or amendment to the TCEQ Executive Director, along with a Certification certifying to the compliance conditions identified below, and any necessary supplementary information.

## **4 Statutory Contract Requirements**

To be eligible for this procedure, a low level radioactive waste disposal contract (including all amendments) must meet each of the following requirements of Tex. Health and Safety Code 401.2456, and include a Certification of the same.

### ***4.1 Radioactivity and Volume Based Pricing***

Contract rates must be both by a price per curie and a price per cubic foot. *If the prices are not expressed in the form of \$y.yy/Ci + \$x.xx/ft<sup>3</sup>, or in the form of the fee structure of the TCEQ rate,*

*the Certification must include a brief (one sentence, if possible) statement explaining how both volume and radioactivity are factored into the pricing.*

#### **4.2 Minimum Price Requirement**

The fees resulting from the contract rates must be greater than the compact waste disposal fees that would be generated under the lower of (a) the TCEQ rate in effect at the time the contract was entered, or (b) the TCEQ rate in effect at the time the waste to be disposed under the contract is delivered to the license holder.

#### **4.3 Good Faith**

The contract must have been negotiated in good faith by the license holder.

#### **4.4 Antitrust Compliance**

The contract must conform to applicable antitrust statutes and regulations.

#### **4.5 Nondiscrimination**

The contract or amendment must not unfairly discriminate amongst the license holder's customers under substantially similar circumstances. Where there are different prices amongst contracts with different material billing factors, the differences must not be unjustifiably or unconscionably disproportionate (although they need not be mathematically proportional).

#### **4.6 Fee Sufficiency**

The contract rates must generate fees sufficient to meet the criteria for party state compact waste under Texas Health & Safety secs. 401.246(a) and (c).

### **5 Additional Contract Requirements**

#### **5.1 Compliance with Law**

The contract must comply with all applicable law.

#### **5.2 Customer Notice**

The contract must put the customer on notice of all specific requirements of Texas Health & Safety sec. 401.2456.

#### **5.3 Contract Interpretation**

The contract must explicitly provide that it is to be interpreted so as to comply with all applicable law, explicitly including Texas Health & Safety Code sec. 401.2456.

#### **5.4 Understanding, Willingness, & Ability**

The contract must be entered into with mutual understanding of each party's obligations under the contract or amendment, and a willingness and ability to perform them fully as they are specified in the Contract. The license holder must understand its obligations and be willing and able to perform them fully and in accordance with applicable law as they are specified in the contract. The Customer must understand its rights and duties under the Contract, including those arising from the Texas Health & Safety Code. The license holder may certify to the Customer's understanding based on Customer's willingly entering into the Contract as evidenced by the signature of an authorized agent of the Customer on the Contract, so long as the license holder has no knowledge or indication to the contrary.

#### **5.5 Parties**

The customer must be legally distinct from the license holder. *For disposal by the license holder, this procedure does not apply.*

#### **5.6 Term**

The Certification should indicate the contract term, and if the effective term for the prices is different from the contract term, the effective term for the prices as well.

## **5.7 Prices**

### **5.7.1 Statement of Prices**

The contract must contain rates that allow the calculation of total shipment fees, for each shipment, that can be precisely calculated once a shipment of known waste characteristics is created. The contract rates must clearly identify the waste types they apply to, in terms which allow easy comparison to the base volume charges in the TCEQ rate. *The Certification must include a summary of the contract prices as they are specified in the contract.*

### **5.7.2 Price Adjustments to Comply with Statutory Requirements**

The contract must explicitly provide that all disposal pricing is subject to, and may be updated as required by, Texas Health & Safety sec. 401.2456.

## **6 TCEQ Review of Contracts/Amendments**

### **6.1 Presumption of Compliance**

Non-party LLRW contract prices and terms are subject to review and approval by the TCEQ Executive Director or the Executive Director's designee to ensure they meet the requirements of Texas Health & Safety sec. 401.2455. Contracts submitted and monitored in accordance with this guidance are presumed to meet all requirements, so long as the certifications are correct, the on-going monitoring demonstrates compliance, and no other information indicating potential noncompliance comes to the attention of TCEQ.

### **6.2 Other information Related to Potential Noncompliance**

Other information which could indicate potential noncompliance includes:

- a. allegations from a customer of misrepresentations or fraud in negotiating or implementing a contract, or
- b. legal findings made against the license holder (or its customer) by state or federal agencies or courts, that relate to antitrust violations, unlawful discriminatory business practices (e.g., discriminating against competitors when prohibited by applicable law), or intentional misrepresentation or fraud in the negotiation of the contract.

### **6.3 Executed Non-Party Customer Contract Effective Date**

A contract or amendment may become effective on the earlier of: (a) TCEQ's acknowledgement that it has received a complete submittal, or (b) five (5) business days after submittal, unless TCEQ sends written (or email) notice that the submittal is not complete before five (5) business days have passed.

### **6.4 Detailed Prospective Review**

If the license holder enters into a contract or amendment for which it is unable to accurately certify one or more of the statements above, the license holder may submit that contract or amendment for prospective review, with explanatory material relating to the certification or certifications it was unable to make. In this case, TCEQ will review the contract or amendment and approve or disapprove it in writing. Such a contract or amendment must not become effective until after it has been approved in writing by the TCEQ Executive Director or the Executive Director's designee.

## **7 Monitoring Requirements**

The license holder shall submit quarterly on-going monitoring reports as described in the *Guidance for Meeting Minimum Price Requirement* (June 30, 2017). In addition to the reporting elements specified in that Guidance, the license holder's quarterly monitoring reports will also include calculations of a type acceptable to TCEQ showing how the prices for each shipment during that quarter compare to prices for shipments of the same waste types under its other active contracts.

## **8 Potential Non-Compliance**

Contracts submitted under this procedure remain subject to review and approval by the TCEQ Executive Director. However, TCEQ will continue to presume that all such contracts meet all statutory requirements, so long as the Certifications remain correct, the on-going monitoring demonstrates compliance, and no other information indicating potential noncompliance comes to the attention of TCEQ.

If TCEQ determines that a contract may not be in compliance, it will notify the license holder in writing. Upon receipt of such a notice, the license holder has thirty (30) days to respond. The contract may continue in force during this period unless the TCEQ makes a written finding that there is a high probability that the contract is not compliant and that allowing the contract to continue in force during this period has a high probability of making it impossible for the contract to be brought into compliance. The license holder must respond with:

- a. information, analysis, or both, demonstrating that the contract is in compliance, or
- b. actions (such as contract-authorized or Customer-agreed price modifications or discontinuation) to bring the contract in compliance.

Upon receipt of information or analysis demonstrating compliance, or upon the license holder's (and Customer's) implementation of actions to bring the contract in compliance, TCEQ may either withdraw its notice or approve the contract, and in either case the contract may continue in force, OR

If TCEQ determines that, under the facts and circumstances of the case, the information or analysis does not demonstrate compliance, or that the actions to bring the contract in compliance did not bring the contract into compliance, then TCEQ shall send the license holder a written notice that it must cease and desist accepting waste for disposal under the contract. Upon receipt of such a notice, the license holder shall, as soon as practicable within normal commercial operations, cease and desist accepting waste for disposal under the contract. The license holder may request that TCEQ reconsider its determination. If the license holder believes that a commercial exigency exists that would cause it or the customer serious financial or other distress, it may request that the contract remain in force during further investigation. TCEQ may extend the period for further investigation for good cause shown. Acceptance of waste for disposal under a contract may be resumed at any time upon the contract's approval by TCEQ, or upon TCEQ's written withdrawal of its objection.