

2010

Texas Radiation Regulatory Conference

Low-Level Radioactive Waste Disposal Rate Setting Activities

Presented by Sage Chandrasoma
Financial Analyst
Texas Commission on Environmental Quality

September 3, 2010

Texas Commission on Environmental Quality

Topics covered in this presentation

- Statute and Rules
- Rule Development
- Goals and Objectives
- Rate Application Package
- Allowable Expenses / Revenues
- Rate of Return
- Flow Chart of Disposal Rate Setting
- Public Participation

Texas Commission on Environmental Quality

On September 10, 2009, TCEQ granted the license to Waste Control Specialists (WCS) for a low level radioactive waste disposal facility in Andrews County, Texas. This includes a compact waste facility (CWF).

Associated with the establishment and operation of this facility, WCS is required to submit an application to TCEQ to allow the Commission to set the disposal rates and fees for the disposal of the radioactive waste at the CWF.

Texas Commission on Environmental Quality

Title 30, Texas Administrative Code (TAC), Chapter
336.1301(b)

"To protect Texas and Vermont compact states' businesses and services, such as electrical production, medical and university research, and private industries, upon which the public relies, the commission will establish the maximum disposal rates charged by the licensee in accordance with the rules in this subchapter."

Texas Commission on Environmental Quality

History:

The 78th Texas Legislature

- Adopted House Bill 1567 on May 24, 2003
- Bill became effective September 1, 2003, codified in Texas Health & Safety Code Chapter 401

Applicable Law:

Texas Health and Safety Code §401.245(b) – Compact Waste Disposal Fees

“The Commission by rule shall adopt and periodically revise compact waste disposal fees according to a schedule that is based on the projected annual volume of low-level radioactive waste received, the relative hazard presented by each type of low-level radioactive waste that is generated by the users of radioactive materials, and the costs identified in Section 401.246.”

Texas Commission on Environmental Quality

Applicable Law:

Texas Health and Safety Code §§ 401.246 (a) – Compact Waste Disposal Fees

“Compact waste disposal fees adopted by the commission must be sufficient to:

- 1) Allow the compact waste facility license holder to recover costs of operating and maintaining the compact waste disposal facility and a reasonable profit on the operation of that facility;*
- 2) Provide an amount necessary to meet future costs of decommissioning, closing, and post-closure maintenance and surveillance of the compact waste disposal facility and the compact waste disposal facility portion of the disposal facility site;*
- 3) Provide an amount to fund local public projects under Section 401.244;*
- 4) Provide a reasonable rate of return on capital investment in the facilities used for management or disposal of compact waste at the compact waste disposal facility; and*
- 5) Provide amount necessary to pay compact waste disposal facility licensing fees, to pay compact waste disposal facility fees set by rule or statute, and to provide security for the compact waste disposal facility as required by the commission under law and commission rules.”*

Texas Commission on Environmental Quality

Applicable Law:

The statute directs the TCEQ to develop rules that promulgate Tex Health and Safety Code 401.245, 401.246, and 401.247.

§401.247 requires *"Fees paid... are reasonable and necessary expenses for ratemaking purposes. "*

Texas Commission on Environmental Quality

Rule Development:

In 2008 and 2009, TCEQ conducted five Stakeholder Meetings and promulgated rules to implement HB 1567

- Developed Chapter 336, Subchapter N: Fees for Low-Level Radioactive Waste Disposal
 - Established the ratemaking process to determine the disposal rate
 - Established the criteria that sets the disposal rate
 - Rules Adopted on February 11, 2009
 - Rules became Effective March 12, 2009
- Defined Generator (30 TAC §336.1303) to mean: *“A person, partnership, association, corporation, or any other entity whatsoever that, as a part of its activities, produces low-level radioactive waste is subject to the Compact.”*

Texas Commission on Environmental Quality

Rate Setting Goals & Objectives:

Created a regulatory process to ensure that the disposal rates are fair, just, reasonable and sufficient considering allowable expenses plus rate of return equivalent earned by comparable enterprises.

TCEQ has the responsibility for reviewing and approving proposed rates and fees prior to WCS receiving waste and collecting the rates & fees.

TCEQ Development of Application Package

During the Summer of 2009, TCEQ developed the TCEQ Compact Waste Disposal Rate Application Package.

- Developed in an Excel Spreadsheet Format
 - Requires adequate support documentation
 - Template of Excel Spreadsheet is located on the TCEQ Website
 - <http://www.tceq.state.tx.us/permitting/radmat/licensing/rates>

In November 2009, the TCEQ Compact Waste Disposal Rate Application was made public via the TCEQ Website

Submission of Licensees' Application Package

Submittal:

On June 1, 2010, Waste Control Specialist, LLC (WCS) submitted their Compact Waste Disposal Rate Application package.

A copy of the submitted WCS Rate Application is available on TCEQ Website

<http://www.tceq.state.tx.us/permitting/radmat/licensing/rates>

Disposal Facilities Approved By License

Comprehensive Disposal Facility:

- Two facilities under one license
 - Texas Compact Waste Disposal Facility (CWF) – Rates are set by TCEQ's ratemaking process under 30 TAC Chapter 336, Subchapter N.
 - Federal Waste Disposal Facility (FWF) – Disposal rates are set by a separate process between WCS and U.S. Department of Energy (DOE).
- Acreage of planned facilities
 - 29.66-acre CWF
 - 89.90-acre FWF
 - 3.29-acre Administrative Area that is common to both facilities

Basis of the TCEQ Rate Application

Types of Allowable Expenses / Revenue Requirements, include but are not limited to, for allocation:

Operation and maintenance costs

Including Financial Assurance Cost

- Closure and Decommissioning
- Corrective Action
- Institutional Control
- Post Closure Care

Depreciation

Taxes

Return on Rate Base

WCS proposal for past-cost recovery

Allowable Categories of Expenses

Closure and Decommissioning

The Closure Plan includes certain activities that must be carried out to allow for issuance of a license amendment for closure, such as:

- Decontamination and/or dismantlement of surface facilities;
- Backfilling of excavated areas; or
- Stabilization of the disposal site for post-closure care; and
- Any significant new information regarding the environmental impact of closure activities and long-term performance of the disposal site.

Corrective Action

Corrective Action must address unplanned events that pose a risk to public health, safety, and the environment that may occur after the decommissioning and closure of the waste disposal facility.

Allowable Categories of Expenses

Post Closure Care

Post Closure Care is for a period of five years which includes the following activities:

- Observation of performance,
- Environmental monitoring , and
- Maintenance and repairs.

Institutional Control

Institutional control is performed by the State of Texas for activities, such as periodic surveillance, monitoring, any required maintenance, and other care, within the facility that help minimize the potential for human exposure to contamination for a period of 100 years.

Definition of Rate on Return

Rate of Return Equation

Weighted average interest rate on outstanding debt =
(Debt portion of total liabilities * interest rate) / total debt portion

Weighted average return on equity =
(Equity portion of CWF of total owners equity * return on equity) / total equity portion of CWF

Rate of Return =
Weighted average interest on outstanding debt +
weighted average return on equity percentage

Rate Base Calculation

Rate Base

- The Rate Base Calculation test year is based on a 12-month period.
 - Rate Base = Net Plant in Service + Working Capital + CWIP
(CWIP: Construction Work In Progress)
- Must be used and useful to the CWF

WCS' Submitted Proposal: Major components of the proposed test year rate revenue requirement in the table below are taken from the WCS Executive Summary:

(Please note TCEQ is charged with adopting a rate schedule, by rule)

<i>(Amounts in \$000's)</i>	Initial Year	WCS Proposal for "With Importation"
Rate Base	\$507,289	\$506,819
Rate of Return	9.9%	9.9%
Return on Rate Base	\$50,145	\$50,095
Taxes on Return	\$23,702	\$25,669
Operating Expenses	\$58,728	\$61,643
Rate Revenue Requirement	\$134,575	\$137,407

<http://www.tceq.state.tx.us/permitting/radmat/licensing/rates>

WCS' Submitted Proposal: The test year rate proposed revenue requirements by product line (i.e., waste class) of the CWF for the "Initial Year" and another added category of "With Importation" are summarized in the table below from the WCS Executive Summary:

(Please note TCEQ is charged with adopting a rate schedule by rule)

<i>Revenue Requirements (\$000's)</i>	Initial Year	WCS Proposal for "With Importation"	
		Compact	Non-Compact
Class A Compactable	\$28,702	\$3,334	\$ -
Class A Non-Compactable	\$3,654	\$203	\$1,230
Class A High Dose Rate	\$9,306	\$591	\$5,807
Class B/C Waste Routine	\$75,798	\$4,814	\$98,173
Class B/C High Activity	\$17,1161	\$1,087	\$22,168
Total	\$134,575	\$10,029	\$127,378
Total With Importation		\$137,407	

WCS' Submitted Proposal: The related proposed maximum disposal rates based on the volumes expected and proposed rate revenue requirements are summarized in the table below taken from the WCS Executive Summary:

(Please note TCEQ is charged with adopting a rate schedule by rule)

<i>Rate per Cubic Foot (\$/ft³)</i>	Initial Year	WCS Proposal for "With Importation"	
		Compact	Non-Compact
Class A Compactable	\$496.16	\$57.64	N/A
Class A Non-Compactable	\$1,488.47	\$82.53	\$210.94
Class A High Dose Rate	\$3,054.19	\$193.98	\$457.38
Class B/C Waste Routine	\$41,762.79	\$2,652.49	\$5,872.48
Class B/C High Activity	\$41,762.79	\$7,957.46	\$17,617.43

<http://www.tceq.state.tx.us/permitting/radmat/licensing/rates>

Radioactive Waste Disposal Rate Setting Flowchart

Phase I: Initial Maximum Disposal Rate (Test Year)

Licensee files rate application (RA) Requesting a maximum rate with the Executive Director (ED)

ED reviews the RA in order to offer the initial maximum rate as set forth in 336.1309 and may request additional information during the review process.

Licensee provides notice of the RA to customers and in a notice format directed by the ED which will include public notice and opportunity to comment and/or request a contested case hearing (CCH).

ED will maintain website to inform the public on the process for consideration of the RA and provide *Texas Register* notice.

A

Is there a Request for CCH?

If there is no request for a CCH, then the ED can process this uncontested RA by rulemaking.

Radioactive Waste Disposal Rate Setting Flowchart

Phase I: Initial Maximum Disposal Rate (Test Year)

A

If a Generator in the Texas compact request for a CCH, ED shall directly refer the RA to State Office of Administrative Hearings (SOAH). Only the ED, the licensee, or a generator has a right to a CCH.

Closing arguments will be filed by all parties, administrative law judge (ALJ) will issue a Proposal for Decision (PFD) and parties will file exceptions.

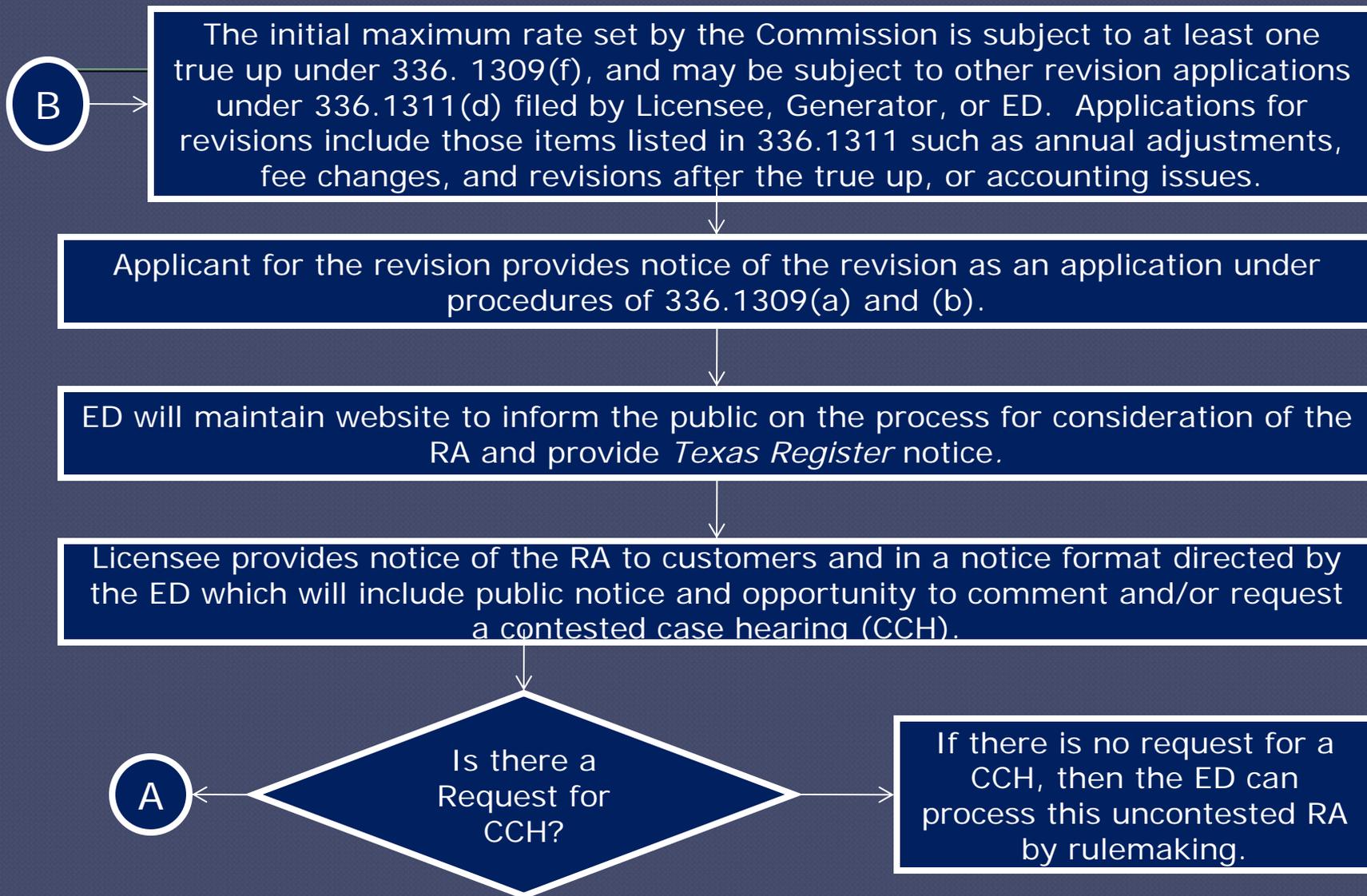
Commission shall consider the PFD, records, and exceptions, if any, at Agenda and set a maximum rate by issuance of an order under 336.1305 to include factors at 336.1309(e) to be published as an expedited rule. Parties will have the right to appeal in district court.

Under 336.1311(b), this maximum rate set under this order is the initial maximum rate for the test year pursuant 336.1309.

PHASE II: Revision to Maximum Disposal Rate

Radioactive Waste Disposal Rate Setting Flowchart

Phase II: Revision Maximum Disposal Rate



Radioactive Waste Disposal Rate Setting Flowchart

Phase II: Revision Maximum Disposal Rate

A

If a Generator in the Texas compact request for a CCH, ED shall directly refer the RA to State Office of Administrative Hearings (SOAH). Only the ED, the licensee, or a generator has a right to a CCH.

Closing arguments will be filed by all parties, administrative law judge (ALJ) will issue a Proposal for Decision (PFD) and parties will file exceptions.

Commission shall consider the PFD, records, and exceptions, if any, at Agenda and set a maximum rate by issuance of an order under 336.1305 to include factors at 336.1309(e) to be published as an expedited rule. Parties will have the right to appeal in district court.

Commission will set the official maximum rate after the first round of revisions and/or true up proceedings.

B

Texas Commission on Environmental Quality

TCEQ and Public Participation for Rulemaking

- Stakeholder meetings and comments on the original rulemaking in 2009
- Web posting of application and all documents in technical review
- Public Comment on Application and Process
- Opportunity for Contested Case Hearing at SOAH for generators, TCEQ's Executive Director, and the applicant
- SOAH proceedings are open to the public
- TCEQ's Commissioners Agenda Meeting regarding the SOAH decisions is an open meeting where parties will make presentations
- Public Comment on proposed rulemaking to finalize the rate schedules
- Adoption and proposals of the rate schedules at public agenda meeting

Questions?

Contact Information:

Sage Chandrasoma, Financial Analyst
TCEQ, Radioactive Materials Division

Email: schandra@tceq.state.tx.us

Phone: 512/ 239-6069

Comments to:

radmat@tceq.state.tx.us