

environmental exposure. Therefore, the commission finds that this rulemaking is not a "major environmental rule."

Furthermore, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a state agency's adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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) adopts a rule solely under the general powers of the agency instead of under a specific state law.

Specifically, the rulemaking does not exceed federal standards because no applicable federal standards exist regarding river basin permitting. Also, the rulemaking does not exceed an express requirement of state law nor exceed a requirement of a delegation agreement. The memorandum of agreement between the United States Environmental Protection Agency and TCEQ regarding delegation of the National Pollutant Discharge Elimination System program allows wastewater discharge permits to be issued in accordance with the river basin cycle or a five-year renewal cycle. Finally, the rulemaking was not developed solely under the general powers of the agency; but as a result of the repeal of TWC, §26.0285. Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the adopted rule does not constitute a major environmental rule, a regulatory impact analysis is not required.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission performed an assessment of this rule in accordance with Texas Government Code, §2007.043. The specific purpose of the rulemaking is to repeal the rule that requires wastewater discharge permits to be issued in conjunction with their respective basin cycle. Repeal of this rule constitutes neither a statutory nor a constitutional taking of private real property. This rulemaking imposes no burdens on private real property because the adopted rule neither relates to, nor has any impact on the use or enjoyment of private real property, and there is no reduction in value of the property as a result of this rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §33.201 *et seq.*, and therefore, it must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rulemaking in accordance with Coastal Coordination Act Implementation Rules at 31 TAC §505.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the adopted rulemaking include: to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas and to ensure sound management of all coastal resources by allow-

ing for compatible economic development and multiple human uses of the coastal zone.

Promulgation and enforcement of this rulemaking does not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rulemaking is consistent with these CMP goals and policies, and because this rulemaking does not create or have a direct or significant adverse effect on any coastal natural resource areas.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission held a public hearing on December 12, 2017. The comment period closed on December 18, 2017. The commission received a comment from Phone2Action.

Response to Comments

Comment

Phone2Action requested that the commission consider this action with the citizens in mind.

Response

The adopted rulemaking is not expected to have a significant effect on the public. Repeal of §305.71 allows wastewater discharge permits to be issued for five-year terms. Additionally, this rulemaking implements HB 3618, which was passed by the 85th Texas Legislature and Texas legislators are elected by the citizens of Texas to represent the interests of their constituents.

Statutory Authority

This repeal is adopted under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt rules necessary to carry out the powers and duties under the TWC and other laws of the state.

The adopted repeal implements House Bill 3618, 85th Texas Legislature, 2017, which repealed TWC, §26.0285.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2018.

TRD-201801042

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: March 29, 2018

Proposal publication date: November 17, 2017

For further information, please call: (512) 239-2613

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 21. TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION

CHAPTER 675. OPERATIONAL RULES

SUBCHAPTER B. EXPORTATION AND IMPORTATION OF WASTE

31 TAC §675.24

The Texas Low-Level Radioactive Waste Disposal Compact Commission (Commission) adopts new §675.24, relating to Requirement to Report on the Importation of Certain Low-Level Radioactive Waste for Management or Disposal that is not Required to be Disposed of in the Compact Facility, with changes to the text as published in the November 3, 2017, issue of the *Texas Register* (42 TexReg 6123).

Summary of the Factual Basis for the Adoption of the New Rule

In order to fulfill its responsibilities with respect to 42 United States Code, §§2021(b) - 2021(j) and Texas Low-Level Radioactive Waste Disposal Compact (Compact), §3.04(9) and §3.05(6) as set out in Texas Health and Safety Code (THSC), Chapter 403, the Commission has determined that it is in the public interest to gather information regarding low-level radioactive waste (LLRW) that enters the host state irrespective of whether it requires an agreement for importation for disposal at the Compact Facility. Pursuant to the Commission's authority set out in THSC, §403.006, the Commission adopts new §675.24 to facilitate the gathering of that information by way of reporting requirements after the entry of the low-level waste into the state rather than requiring approval for the importation of certain categories of LLRW into the host state.

Summary of Changes made in the Proposed Rules after Comments

After reviewing comments received during the public comment period, the Commission: 1) revised the rule to require semi-annual rather than quarterly reporting; 2) added language to subsection (b)(4) to exclude waste that is regulated under §675.23, Importation of Waste from a Non-Party Generator for Disposal; 3) revised subsection (b)(4) to clarify that the Commission seeks gross volume or weight of reported waste; 4) added language to subsection (b)(4) to reflect that waste disposed of in the same reporting period which it was received should not be reported; 5) revised subsection (c)(2) to clarify the source attributes of waste; 6) removed subsection (c)(6) and combined information sought regarding location of management or the date and location of disposal of waste into subsection (c)(5); 7) added language to subsection (d) to set forth the term of the Commission's fiscal year; 8) added language to subsection (d) to note that entities with a reporting obligation may do so on their own forms so long as the Commission provides prior authorization of the forms; and 9) added language to note that new entrants that import waste into the host state must enter into an agreement with a reporting requirement within 30 days of commencement of operations.

Public Comment and Commission Responses

The public comment period on the proposed new rule opened on November 3, 2017 and extended through midnight on December 8, 2017.

The Rules Committee of the Commission conducted a meeting to consider comments on the proposed rule on January 29, 2015 at 10:00 a.m. in the offices of the Office of the Attorney General of Texas located at 300 West 15th Street, Austin, Texas 78701.

During the public comment period, the Commission received written comments from Energy Solutions, Inc. (ES), Nuclear Sources & Services, Inc (NSSI), and Waste Control Specialists, LLC (WCS). ES supports adoption of the rule. WCS does not

oppose adoption of the rule. NSSI believes the rule is inapplicable to its operations based on other law. Specific comments are addressed below.

WCS Comments

Comment

WCS recommended that the Commission remove §675.24(b)(1) because WCS asserts there are exceptions in regulations for using Nuclear Regulatory Commission Forms 540 or 541 that will result in inadvertent exclusions of waste that the Commission wants to capture under new §675.24. However, WCS did not provide specific examples of this inadvertently excluded waste that would cause a reporting discrepancy under subsection (b)(1).

RESPONSE

The Commission has not identified any waste that would be inadvertently excluded, causing a reporting discrepancy by the rule as proposed. Accordingly, the Commission declines to make the recommended change.

Comment

WCS recommended adding an exclusion of waste that is regulated under existing §675.23 to clarify the differentiation of waste types under §675.23.

RESPONSE

The Commission agrees that this clarification will be useful for reporting purposes and makes the recommended change.

Comment

WCS took issue with the Commission's statement in the proposed rule preamble that new §675.24 will cause no significant additional economic costs as a result of compliance with the rule. WCS commented that the new reporting requirements will entail significant time, effort, and costs to WCS because it will need to modify waste tracking software and provide additional training to employees. WCS accordingly recommended changes to the reporting categories in §675.24(c), including removal of subsection (c)(3), which requires reporting on the activity of waste in curies.

RESPONSE

The Commission disagrees that the new reporting requirements, including curie amounts, will entail significant economic costs to WCS. First, WCS must already monitor and estimate curie amounts for other purposes such as waste transportation. Accordingly, a new curie reporting category is unlikely to significantly disrupt WCS's overall operations. Further, the additional reporting cost is outweighed by the necessity of curie reporting information and the public benefit resulting from the Commission's review of curie quantities received. The Commission declines to make any change in response to this comment. However, the Commission has changed the reporting requirement from quarterly to semi-annual, which will relieve some of the expense burden associated with reporting under the new rule.

WCS's comment does highlight the fact that the reporting categories in §675.24(c) should be clear and understandable to all affected parties. Accordingly, the Commission revises subsection (c)(2) to clarify the source attributes of waste to be reported.

Comment

WCS suggested that §675.24(c)(4) should clarify whether requested weight or volume is gross or net. WCS further recom-

mended that waste not be reported if it is disposed of in the same reporting period in which it was received.

RESPONSE

The Commission agrees with both suggestions and revises §675.24(c)(4) to require reporting of gross weight or volume and not require reporting of waste that has been disposed of in the same reporting period in which it is received.

Comment

WCS commented that there is some confusion about the location of management and waste in §675.24(c)(5) and (6) given that the entity submitting the report would be the entity managing or disposing of the waste.

RESPONSE

The Commission agrees that the rule as proposed should be clarified so there is no ambiguity about the location of management and the waste. Accordingly, the Commission revises the rule to require reporting of either subsection (c)(5) or (6), but not both. Accordingly, the Commission removes subsection (c)(6) and combines this reporting category into a single subsection (c)(5) seeking information regarding the location of management or the date of and location of disposal of waste. The Commission further clarifies that location means the physical location of management or waste.

Comment

WCS commented that the subsection (d) should indicate that the timeframe for reporting is the State of Texas fiscal year.

RESPONSE

The Commission agrees that the State of Texas fiscal year is appropriate for reporting purposes and revises subsection (d) to reflect the reporting timeframe begins September 1st and ends August 31st. The Commission further clarifies that a reporting entity may use its own form for reporting the required information so long as the Commission has provided its prior authorization for use of that form.

Energy Solutions, Inc. Comments

Comment

ES questioned whether the new rule is intended to be applicable to the waste described in §675.24(b) if such waste is generated in Texas or Vermont. ES expresses the opinion that if it does not so apply, the new rule should be made applicable to such waste if generated in Texas or Vermont.

RESPONSE

The Commission does not intend for the new rule to apply to the waste described in §675.24(b) if it is generated within Texas or Vermont. The Commission believes that its primary authority is designed to address issues surrounding the importation of LLRW into the Compact for disposal or management. The Commission declines to make any changes to §675.24 based on this comment.

Comment

ES questioned whether it is intended that a generator or a broker apply for importation of waste described in §675.24(b) or whether it is intended that the applicant should be an entity in the host state that manages or disposes of such waste. ES further suggests that if it is intended that an entity in the host state be the

applicant that such entity should submit an application for each generator.

RESPONSE

New §675.24 is not intended to set up a system to approve or disapprove of the importation into the host state of waste described in §675.24(b). The rule is intended to require entities within the host state who do import the described waste for management or disposal to report such importations to the Commission on a regular basis. The Commission declines to make any changes to the new rule based on this comment.

Comment

ES suggested that the use of the word "entity" is confusing as to its use between §675.24(c) and (e) when compared to its use in §675.23(f).

RESPONSE

The Commission does not believe that the use of the word "entity" as used in subsections (c) and (e) is confusing once it is understood that it is not generators or brokers who import Non-Compact-Facility Low-Level Radioactive Waste (NCFW) but entities within the host state that manage or dispose of NCFW that must enter into NCFW reporting agreements with the Commission. The Commission declines to make any change to the new rule based on this comment.

Comment

ES suggested that the Commission, if it has the authority, may wish to include in the new rule a prohibition against the importation of waste of international origin.

RESPONSE

The Commission does not intend in this rule to alter the criteria established for importation of NCFW into the host state by agencies of the State of Texas. Rather, this rule is intended to establish a reporting mechanism so that the Commission and thus the people of Texas may have information as to the total of LLRW including NCFW and LLRW that is shipped to the Compact Facility. The Commission declines to make any changes to the new rule based on this comment.

Comment

ES stated its belief that the fiscal note in the proposed rule preamble that states that no fiscal implications are anticipated for the Compact Commission or units of state or local government as a result of the proposed rule is incorrect because of the diversion of NCFW to the Resource Conservation Recovery Act (RCRA) cell at the WCS site rather than to the Compact Facility resulting in the loss of import fee income to compact, the host state, and the host county.

RESPONSE

The Commission disagrees with this comment. The new rule does not alter the criteria for whether waste may be shipped to a RCRA facility or must be shipped to the Compact Facility and is, therefore, neutral as to import fee income to the compact, the host state and the host county. And, it should be noted that the compact does not directly receive any income from import fees of any kind. The Commission declines to make any changes based on this comment.

Comment

ES encouraged the Commission to promote the disposal of all LLRW in licensed facilities in order to limit the number of facilities needed to ensure safe and cost-effective management.

RESPONSE

The Commission is unaware that LLRW is being disposed of in unlicensed facilities within the Compact. If that is happening, however, this rule may be helpful in discovering such events. Certainly, it will not increase the risk of the occurrence of such disposals. The Commission declines to make any changes based on this comment.

NSSI Comments

Comment

NSSI commented that providing much of the information that a host state entity would be required to report under §675.24(c) is proprietary and if publicly available could cause NSSI to be at a competitive disadvantage with other entities that engage in the same or similar business. NSSI also points out that much of the information required is already provided to the Texas Commission on Environmental Quality (TCEQ).

RESPONSE

It is intended that the agreements entered into with entities in the host state that import NCFW will contain a provision that the Commission will protect proprietary information to the extent provided by Texas law up to and including seeking an opinion from the Open Records Division of the Texas Attorney General's Office regarding what information may be withheld from public disclosure. To the extent information is being made available to the TCEQ, the Commission believes that should ease any burden associated with gathering the information for reporting to the Commission. The Commission also believes that its collection of the information separately in a format designed by the Commission is important to its mission. The Commission declines to make any changes to the new rule based on this comment.

Comment

NSSI commented that reporting quarterly would be burdensome and suggests that an annual report should be sufficient.

RESPONSE

While the Commission does not necessarily agree that a quarterly report is burdensome given that virtually all required information should be readily available, the Commission revises the new rule to provide for a semi-annual report rather than a quarterly one.

Comment

NSSI sought clarification as to whether the required agreement is required on the behalf of NSSI itself or is it to be passed on to its customers. It also asks whether there are criteria for becoming an "agreement site" and whether being such a site will require additional fees or audits.

RESPONSE

The required agreement is solely the responsibility of an entity in the host state that imports NCFW. There are no criteria for becoming an "agreement site" other than that included within the new rule. Being an agreement site under the new rule will not require any additional fees. Though none are anticipated, there is always the possibility (however remote) of an audit. The Commission declines to make any changes to the new rule based on these comments. However, NSSI's comment raised an is-

sue regarding new entrants in the market that may be subject to the rule. Accordingly, the Commission has added language to §675.24(e) requiring new entrants to enter into an agreement within 30 days of commencement of operations.

Comment

NSSI questioned whether the Commission has the authority to cause the suspension of importations of NCFW during a period of dispute about the terms of the NCFW agreement.

RESPONSE

The Commission believes it has the authority to disallow importations of NCFW during a period of dispute with an entity over the terms of the NCFW agreement. On the other hand, the Commission believes that it is clear from the terms of the new rule that the primary recourse intended to be utilized by the Commission in the enforcement of this new rule is the reporting of such events to the host state agency responsible for the operations of the entity.

Concise Restatement of Statutory Authority

New §675.24 is adopted pursuant to Public Law 105-236 and the Texas Low-Level Radioactive Waste Disposal Compact (Compact) as set out in Texas Health and Safety Code, Chapter 403. Compact, §3.05(4) grants the Commission the rulemaking authority to carry out the terms of the Compact; Compact, §3.04(9) authorizes the Commission to assemble and make public information concerning low-level radioactive waste (LLRW) management needs, technologies, and problems; and, Compact, §3.05(6) authorizes the Commission to enter into agreements regarding the management and disposal of LLRW.

The Commission interprets the foregoing provisions as authority to require reporting of information on Non-Compact-Facility Low-Level Radioactive Waste. New §675.24 will further the public interest by gathering and monitoring information regarding LLRW that enters the host state irrespective of whether it requires an agreement for importation for disposal at the Compact Facility.

§675.24. Requirement to Report on the Importation of Certain Low-Level Radioactive Waste for Management or Disposal that is not Required to be Disposed of in the Compact Facility.

(a) This section is applicable only in the host state.

(b) This section is designed to gather information on the importation into the host state for disposal or management of certain low-level waste that:

(1) is required when shipped to be listed on Nuclear Regulatory Commission (NRC) Forms 540 or 541 (Uniform Low-Level Waste Manifest Shipping Forms);

(2) is included within the definition of low-level radioactive waste found in 30 TAC §336.2(89) (relating to Definitions) as the definition is in effect on the date this section becomes effective or as 30 TAC §336.2(89) may be amended or renumbered in the future, but is not intended for disposal in the Compact Waste Facility;

(3) is not low-level radioactive waste described by 42 United States Code, §2021c(b)(1) or waste that is regulated under §675.23 of this title (relating to Importation of Waste from a Non-Party Generator for Disposal); and

(4) for the purposes of this section, the material described in this subsection will be referred to as Non-Compact-Facility Low-Level Radioactive Waste ("NCFW").

(c) Any entity in the host state that imports NCFW must enter into an agreement with the Commission that contains a requirement that it will report to the Commission on a semi-annual basis the following information with respect to each shipment of NCFW that it has received in the previous six-month period:

- (1) the name of the generator;
- (2) the name of the unaffiliated state, territory, or low-level waste compact (if any) where the waste originated;
- (3) the activity of the waste in curies;
- (4) the gross volume or weight of the waste; the date of receipt; whether the waste is being stored, processed, or otherwise managed; provided, however, that waste that has been disposed of in the same reporting period in which it was received shall only report gross volume or weight; and
- (5) the physical location of management or the date of and physical location of disposal of that waste.

(d) Semi-annual reports must be submitted electronically on forms provided by the Commission and must be submitted before the 31st day after the end of each six-month period of the Commission's fiscal year, which begins on September 1 and ends on August 31. An entity may file its semi-annual report on its own form if the Commission has provided its prior written authorization for the form submitted.

(e) An entity that imports low-level radioactive waste into the host state as described in subsection (c) of this section shall have entered into an agreement with the Commission within 90 days after the effective date of this section or within such time extensions thereafter as the Commission may allow. New entrants that import waste into the host state as described in subsection (c) of this section must enter into an agreement with the Commission within 30 days of commencement of management operations. To the maximum extent possible, each agreement entered into under this section will contain provisions identical to those in each other agreement entered into under this section.

(f) An entity that imports waste into the host state as described in subsection (c) of this section shall submit an application for entry into an agreement with the Commission electronically or on paper on a form provided by the Commission.

(g) Failure on the part of an entity that imports waste into the host state as described in subsection (c) of this section to comply with any provision of this section or the agreement entered into pursuant to subsection (d) of this section may result in the Commission reporting such failures to the host state agency that has licensed, permitted, or otherwise authorized the operation of such entities.

(h) The Commission may revoke or amend an agreement on its own motion or in response to an application by the agreement holder. When the Commission amends an NCFW agreement on its own motion, it may provide a reasonable time to allow the agreement holder to make the changes necessary to comply with any additional requirements imposed by the Commission. No importation of NCFW shall be allowed under any amended agreement for the importation of NCFW until:

- (1) the amendment to the NCFW agreement has been executed by both the Commission and the agreement holder; and
- (2) the agreement holder has made any changes necessary to comply with additional requirements.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2018.

TRD-201801026

Leigh Ing

Executive Director

Texas Low-Level Radioactive Waste Disposal Compact Commission

Effective date: March 28, 2018

Proposal publication date: November 3, 2017

For further information, please call: (512) 936-1660



TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 71. CREDITABLE SERVICE

34 TAC §§71.14, 71.29, 71.31

The Employees Retirement System of Texas (ERS) adopts amendments to 34 Texas Administrative Code (TAC) Chapter 71, concerning Creditable Service, §71.14 (Payments to Establish or Reestablish Service Credit), §71.29 (Purchase of Additional Service Credit), and §71.31 (Credit Purchase Option for Certain Waiting Period Service) without changes to the proposed text as published in the January 19, 2018, issue of the *Texas Register* (43 TexReg 327), and these sections will not be republished. The amendments were approved by the ERS Board of Trustees (Board) at its March 7, 2018, meeting.

ERS adopts amendments to Chapter 71 to comply with recent legislation which requires the Board to adopt new actuarial factor tables at least once every four years. The Board adopted a new set of actuarial assumptions on August 23, 2017, which serve as the basis for new actuarial factor tables effective September 1, 2018, and allow ERS to use the most up-to-date actuarial assumptions in order to accurately determine the cost of benefits payable to members and retirees of the retirement plans.

Section 71.29 (Purchase of Additional Service Credit), and §71.31 (Credit Purchase Option for Certain Waiting Period Service) are amended to add language that actuarial factor tables concerning certain purchases of service credit by ERS members will be subject to the factor tables, as adjusted from time to time, adopted under §815.105, Texas Government Code.

Additionally, §71.14 (Payments to Establish or Reestablish Service Credit) is amended to repeal subsections (c), (d) and (e) regarding purchasing service through payroll deduction, which are obsolete since that is no longer permitted by the retirement system.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under the Texas Government Code §§815.102, 815.105, 835.002, 840.002, and 840.005 which provide authorization for the ERS Board of Trustees to adopt mortality, service and other tables necessary for the retirement system and to adopt rules for the retirement system.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2018.