

HEALTH AND SAFETY CODE
TITLE 5. SANITATION AND ENVIRONMENTAL QUALITY
SUBTITLE D. NUCLEAR AND RADIOACTIVE MATERIALS
CHAPTER 401. RADIOACTIVE MATERIALS AND OTHER SOURCES OF RADIATION

Sec. 401.202. LICENSING AUTHORITY. (a) The commission may grant, deny, renew, revoke, suspend, or withdraw licenses for the disposal of low-level radioactive waste from other persons and for the processing of that waste.

(b) The commission shall receive applications for and may issue not more than one license for a single compact waste disposal facility. The commission may issue the license only for a facility that meets:

(1) requirements for licensing provided by this subchapter and by commission rules; and

(2) requirements for disposal adopted by the commission that meet federal requirements for disposal.

~~(c) Except as provided by Section 401.216, the commission shall provide that the compact waste disposal facility license authorizes only the disposal of compact waste.~~

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 143, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 19, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. [1604](#)), Sec. 12, eff. June 15, 2007.

Sec. 401.2065. PARTY STATE WASTE RESERVATION.

(a) Licensed disposal capacity is reserved for the exclusive use of party state compact generators per the following:

(1) The reserved volume capacity is 3,000,000 total cubic feet or the required volume capacity identified by the commission per Section 401.208, whichever is greater, and

(2) The reserved curie capacity is 2,000,000 total curies or the required curie capacity identified by the commission per Section 401.208, whichever is greater.

(b) Not less than 80 percent of the reserved volume and curie capacity shall be for compact waste generated in the host state and 20 percent of the volume and curie capacity shall be for compact waste generated in Vermont

(c) The commission shall correct for radioactive decay in making determinations about the total activity disposed in the compact facility.

Sec. 401.207. OUT-OF-STATE WASTE; NONPARTY COMPACT WASTE.

(a) The compact waste disposal facility license holder may not accept low-level radioactive waste generated in another state for disposal under a license issued by the commission unless the waste is:

(1) accepted under a compact to which the state is a contracting party;

(2) federal facility waste that the license holder is licensed to dispose of under Section 401.216; or

(3) generated from manufactured sources or devices originating in this state.

(b) The compact waste disposal facility license holder may accept for disposal at the compact waste disposal facility approved nonparty compact waste that is classified as Class A, Class B, or Class C low-level radioactive waste in accordance with the compact waste disposal facility license **to the extent the acceptance does not diminish the disposal volume or curie capacity available to party states**. The license holder may not accept any nonparty compact waste for disposal at the facility until the license has been modified by the commission to specifically authorize the disposal of nonparty compact waste.

(c) The compact waste disposal facility license holder may not accept waste of international origin for disposal at the facility.

(d) The compact waste disposal facility license holder may not accept for disposal at the compact waste disposal facility nonparty compact waste that does not meet the waste characteristics and waste forms for disposal applicable to compact waste as set forth by the commission in the compact waste disposal facility license. Before the license holder may accept nonparty compact waste for disposal, the commission must certify ~~through a written evaluation~~ that the waste is authorized for disposal under the license. If the disposal is not authorized under the license, the commission must inform the license holder of the license amendments necessary to authorize the disposal.

~~(d-1) Beginning September 1, 2015, the compact waste disposal facility license holder may accept nonparty compact waste for disposal at the facility only if:~~

~~(1) the waste has been volume-reduced, if eligible, by at least a factor of three in a manner consistent with this subchapter as provided by commission rule; and~~

~~(2) the compact waste disposal facility license holder collects a surcharge under Subsection (g).~~

~~(d-2) If volume reduction of a low-level radioactive waste stream would result in a change of waste classification to a class higher than Class C, the payment of the fee and compliance with other requirements of Subsection (d-1) do not apply.~~

~~(d-3) The commission may assess an additional fee on a nonparty compact waste generator for failing to comply with the volume reduction requirements established under this section. The fee shall be deposited to the credit of the low-level radioactive waste fund under Section 401.249. Fees deposited under this subsection may be transferred and used only to support the operations of the Texas Low-Level Radioactive Waste Disposal Compact Commission under Section 401.251.~~

~~(e) The compact waste disposal facility license holder may not collect a fee under this section or enter into a contract for the disposal of nonparty low-level radioactive waste that has been designated as Class A low-level radioactive waste under 10 C.F.R. Section 61.55 and commission rule unless the waste is containerized. The compact waste disposal facility license holder may collect a fee and dispose of:~~

~~(1) not more than the greater of:~~

~~(A) 1.167 million curies of nonparty compact waste;~~

~~or~~

~~(B) an amount of nonparty compact waste equal to 30 percent of the initial licensed capacity of the facility; and~~

~~(2) not more than 275,000 curies of nonparty compact waste in any fiscal year.~~

~~(e-1) The legislature by general law may establish revised limits under Subsection (e) after considering the results of the study under Section 401.208.~~

~~(e-2) The commission's executive director, on completion of the~~

~~study under Section 401.208, may prohibit the license holder from accepting any additional nonparty compact waste if the commission determines from the study that the capacity of the facility will be limited, regardless of whether the limit under Subsection (f) has been reached.~~

~~(f) Of the total initial licensed capacity of the compact waste disposal facility:~~

~~(1) not more than 30 percent of the volume and curie capacity shall be for nonparty compact waste; and~~

~~(2) of the remaining capacity, not less than 80 percent of the volume and curie capacity shall be for compact waste generated in the host state and 20 percent of the volume and curie capacity shall be for compact waste generated in Vermont.~~

~~Text of subsection effective until September 01, 2019~~

(g) The commission shall assess a surcharge for the disposal of nonparty compact waste at the compact waste disposal facility. The surcharge is ~~10~~ 5 percent of the total contracted rate under Section 401.2456 and must be assessed in addition to the total contracted rate under that section.

~~Text of subsection effective on September 01, 2019~~

~~(g) The commission shall assess a surcharge for the disposal of nonparty compact waste at the compact waste disposal facility. The surcharge is 20 percent of the total contracted rate under Section 401.2456 and must be assessed in addition to the total contracted rate under that section.~~

(h) A surcharge collected under Subsection (g) shall be deposited to the credit of the environmental radiation and perpetual care account.

~~(h-1) The commission shall conduct a study of the surcharge described by Subsection (g) and, not later than December 1, 2016, shall issue the results of the review to the legislature. The commission shall review the operations and expenses of the compact waste disposal facility license holder and shall require the compact waste disposal facility license holder to provide justification of disposal expenses and historical costs associated with the facility~~

~~through appropriate evidentiary and empirical records, studies, and other applicable methodologies. The commission shall consider the impact of the surcharge on the overall revenue generated for the state and may request the assistance of the comptroller in conducting the analysis of the impact of the surcharge.~~

(i) The Texas Low-Level Radioactive Waste Disposal Compact Commission by rule shall adopt procedures and forms for the approval of the importation of nonparty compact waste.

(j) An application for the approval of the importation of nonparty compact waste may be submitted to the Texas Low-Level Radioactive Waste Disposal Compact Commission only by the generator of the waste.

(k) The commission, in coordination with the Texas Low-Level Radioactive Waste Disposal Compact Commission, shall adopt rules establishing criteria and thresholds by which incidental commingling of party state compact waste and waste from other sources at a commercial processing facility is considered and reasonably limited. The criteria and thresholds for commingling under this subsection established by commission rule are binding on any criteria and thresholds that may be established by the Texas Low-Level Radioactive Waste Disposal Compact Commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 21, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. [1504](#)), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. [347](#)), Sec. 4, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 790 (H.B. [2662](#)), Sec. 1(a), eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 790 (H.B. [2662](#)), Sec. 1(b), eff. September 1, 2019.

Sec. 401.2075. LIMITATION ON NONPARTY COMPACT WASTE.

(a) The compact waste disposal facility license holder may accept nonparty compact waste at the facility if:

(1) the facility has at least three years' worth of constructed capacity based on the average party state compact waste disposed in the facility in the preceding five years, not including waste from decommissioned nuclear plants, disposal of oversize components and from nonrecurring events;

(2) In the event that the compact waste disposal facility license holder does not have sufficient constructed capacity in accordance with subsection (1) above, prior to the acceptance of any nonparty waste, it shall;

(i) construct additional capacity; or

(ii) file and have approved by the commission a performance bond conditioned on the construction of additional capacity to meet the requirements of Subsection (a) above; or

(iii) alternative actions may be adopted as long as they are acceptable to a majority of the party state nuclear utilities.

(b) If a party state notifies the federal commission that a nuclear power reactor located in the state will be decommissioned, and the time-phased decommissioning schedule and the Post-Shutdown Decommissioning Activities Report indicates the low-level radioactive waste to be disposed at the facility, the license holder shall have constructed adequate volume at time of disposal.

(c) The compact waste disposal facility license holder shall obtain an amendment to the facility operating license to increase the allowable curie capacity by two million curies when the compact facility has reached 80 percent of its allowable disposed curie inventory.

Sec. 401.241. SECURITY. (a) In determining the amount of security required of a compact waste disposal facility license holder under Section 401.109, the commission shall also consider the need for financial security to address and prevent unplanned events that pose a risk to public health and safety and that may occur after the decommissioning and closure of the compact waste disposal facility or a federal facility waste disposal facility licensed under Section 401.216.

~~(b) The amount of security required of a license holder under this section may not be less than \$20 million at the time the disposal facility site is decommissioned. The commission shall use interest earned on the security to offset any other financial obligations incurred by the license holder to the commission. The commission shall establish a schedule for the total payment of the amount of the security required under this section based on:~~

~~(1) the amount of low level radioactive waste received at the site;~~

~~(2) the long term risk to health, safety, and the environment posed by the waste; and~~

~~(3) the need to address and prevent unplanned events that pose a risk to public health and safety.~~

(c) The payment schedule required under this section must be sufficient to ensure that the amount of security provided by the license holder at any time between the issuance of the license and the time at which the facility is decommissioned is sufficient to:

(1) address any increase in the risk to public health and safety that accompanies an increase in the volume of waste accepted by the license holder; and

(2) meet the requirements of the commission for addressing unplanned events that may occur after the site has been closed.

(d) The commission may require a license holder under this subchapter to provide security in the forms listed under Section 401.109(d).

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

~~Text of section effective on September 01, 2019~~

~~**Sec. 401.2445. STATE FEE.** The compact waste disposal facility license holder each quarter shall transfer to the state general revenue fund five percent of the gross receipts from:~~

~~(1) compact waste received at the compact waste disposal facility; and~~

~~(2) any federal facility waste received at a federal facility waste disposal facility licensed under Section 401.216.~~

~~Added by Acts 2017, 85th Leg., R.S., Ch. 790 (H.B. 2662), 3(b), eff. September 1, 2019.~~

Sec. 401.2456. CONTRACTS FOR NONPARTY COMPACT WASTE DISPOSAL.

(a) At any time after the commission has granted approval to begin operating the compact waste disposal facility, the compact waste disposal facility license holder may contract rates with nonparty compact waste generators for the disposal of nonparty compact waste at the facility in accordance with the compact waste disposal facility license.

~~(b) Rates and contract terms negotiated under this section are subject to review and approval by the commission's executive director to ensure they meet all of the requirements of this section.~~

~~(c) Rates negotiated under this section must be set both by a price per curie and a price per cubic foot. Fees resulting from the negotiated rates must be greater than, as applicable:~~

~~(1) the compact waste disposal fees under Section 401.245 as set by the commission that are in effect at the time the rates are negotiated; or~~

~~(2) the interim compact waste disposal fees under Section 401.2455 as set by the commission's executive director that are in effect at the time the rates are negotiated.~~

~~(d) A contract under this section must:~~

~~(1) be negotiated in good faith;~~

~~(2) conform to applicable antitrust statutes and regulations; and~~

~~(3) be nondiscriminatory.~~

~~(e) Rates set under this section must generate fees sufficient to meet the criteria for party state compact waste under Sections 401.246(a) and (c).~~

Added by Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. [1504](#)), Sec. 6, eff. September 1, 2011.

Sec. 401.2465. WASTE DISPOSAL FEE COMPARISON.

(a) The compact waste disposal facility license holder shall conduct an annual comparison of party state and nonparty state compact waste disposal fees considering:

- (1) Total invoiced fees from disposal operations; and
- (2) Total volume of low-level radioactive waste disposed

(b) Low-level radioactive waste from facility decommissioning, disposal of oversize components and from nonrecurring events shall be excluded from the comparison.

(c) The average fee shall be computed by dividing the total invoiced disposal fees by the total volume of low-level radioactive waste disposed.

(d) If the average fee charged to party state generators exceeds the average fee charged to non-party state generators:

(1) the compact facility license holder shall rebate prior year fees to the party state generators such that the average fee charged to party state generators shall be one dollar less than the average fee charged to non-party state generators.

(2) The rebate shall be allocated among the party state generators according to the fractional amount of the total fees paid by each individual generator based on the compact facility license holder's disposal invoices for the prior year.

(e) Upon written request of the party state nuclear utilities, the compact facility license holder will retain an independent auditor to evaluate the computation of average fees and the rebates provided to party state generators as set out in (a) through (d) of this section.

(1) The independent auditor shall be jointly approved by the compact facility license holder and the party state nuclear utilities, and;

(2) A copy of the audit report shall be made available to the party state nuclear utilities within 90 days of receipt of the audit.

Sec. 401.271. STATE FEE ON RADIOACTIVE SUBSTANCES. (a) A holder of a license issued by the commission under this chapter that authorizes the disposal of a radioactive substance from other persons shall remit each quarter an amount equal to ~~10~~ 5 percent of the license holder's gross receipts received from disposal operations under a license issued under this chapter that occur after the effective date of the Act enacting this section ~~as follows:~~

~~(1) five percent shall be remitted to the comptroller for deposit to the credit of the general revenue fund; and~~

~~(2) five percent shall be remitted~~ to the host county in accordance with Sections 401.244(b) and (d).

(b) Subsection (a) does not apply to ~~compact waste or federal facility waste as defined by Section 401.2005 or~~ industrial solid waste as defined by Section 361.003.

(c) A holder of a license or permit issued by the commission under this chapter or Chapter 361 that authorizes the storage, other than disposal, of a radioactive waste or elemental mercury from other persons shall remit each quarter to the commission for deposit into the general revenue fund an amount equal to 20 percent of the license or permit holder's gross receipts received from the storage of the substance for any period exceeding one year. This subsection applies only to the storage of the substance for any period exceeding one year. This subsection applies only to the storage of radioactive waste or elemental mercury at or adjacent to the compact waste disposal facility.

Added by Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. [1604](#)), Sec. 22, eff. June 15, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. [1504](#)), Sec. 10, eff. September 1, 2011.