

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Rulemaking Adoption

AGENDA REQUESTED: July 25, 2012

DATE OF REQUEST: July 6, 2012

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Bruce McAnally, (512) 239-2141

CAPTION: Docket No. 2011-1266-RUL. Consideration of the adoption of the amendment to Section 330.7 of 30 TAC Chapter 330, Municipal Solid Waste.

The adoption would implement Senate Bill 1258, 82nd Legislature, 2011, Regular Session, which authorizes the commission to issue a permit by rule to a county or a municipality with a population of 10,000 or less in arid-exempt areas for disposal of demolition waste from abandoned or nuisance buildings. The proposed rule was published in the February 24, 2012 issue of the *Texas Register* (37 TexReg 1191). (Steve Odil, Anthony Tatu) (Rule Project No. 2011-048-330-WS)

Ashley Forbes for Brent Wade
Deputy Director

Earl Lott
Division Director

Bruce McAnally
Agenda Coordinator

Copy to CCC Secretary? NO X YES

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: July 6, 2012

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

From: Brent Wade, Deputy Director
Office of Waste

Docket No.: 2011-1266-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 330, Municipal Solid Waste
SB 1258: Disposal of Demolition Waste
Rule Project No. 2011-048-330-WS

Background and reasons for the rulemaking:

Senate Bill 1258, 82nd Legislature, 2011, added Texas Health and Safety Code (THSC), §361.126. This statute allows the commission to issue a permit by rule (PBR) to authorize certain counties or municipalities to dispose of demolition waste from nuisance or abandoned buildings. The legislation directs the commission to adopt rules under THSC, §361.024 to control the collection, handling, storage, processing, and disposal of these wastes.

Scope of the rulemaking:

The adopted rule creates a new PBR to authorize a county or municipality with a population of 10,000 people or less to dispose of demolition waste from properties with nuisance or abandoned buildings that have been acquired by the county or municipality by means of bankruptcy, tax delinquency, or condemnation on land that is owned or controlled by the county or municipality and that would qualify for an arid exemption under commission rules.

A.) Summary of what the rulemaking will do:

The adopted rule will establish a PBR for small west Texas communities to dispose of demolition waste from nuisance and abandoned buildings. The adopted rule also describes the conditions that must be met to qualify for the PBR.

B.) Scope required by federal regulations or state statutes:

The state statute indicates that the PBR may be utilized by counties or municipalities with populations of 10,000 people or less. Demolition waste must come from abandoned or nuisance structures that have been acquired by the county or municipality by means of bankruptcy, tax delinquency, or condemnation. Disposal must occur on land that would qualify for an arid exemption under commission rules.

The state statute directs the commission to adopt rules to control the collection, handling, storage, processing, and disposal of these wastes to protect public and private property, rights-of-way, groundwater, and any other right that requires protection. Although these

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facilities are subject to the federal standards in 40 Code of Federal Regulations Part 257, there are no federal standards specifically for the disposal of demolition waste from nuisance and abandoned buildings.

C.) Additional staff recommendations that are not required by federal rule or state statute: None.

Statutory authority:

THSC, §§361.002, 361.011, 361.024, 361.061, and 361.126 and Texas Water Code, §5.103 which provide the commission the authority to adopt rules necessary to carry out its power and duties under the Texas Solid Waste Disposal Act.

Effect on the:

A.) Regulated community:

The adopted rule would provide an opportunity to the governing bodies of small west Texas counties and municipalities to dispose of demolition waste from abandoned and nuisance buildings at a reduced cost.

B.) Public:

In communities utilizing the PBR, there would be a reduction in the number of abandoned and nuisance buildings. These structures are potentially unsafe and some are reported to have fostered illegal activities. With removal of these structures, it is expected that these properties would be more suitable for construction and more likely to return to local tax rolls.

C.) Agency programs:

At existing staffing levels, the Municipal Solid Waste Permits Section will be reviewing and processing forms documenting the utilization of the PBR. Small Business and Local Government Assistance Program staff may receive inquiries regarding the PBR.

Stakeholder meetings:

No stakeholder meetings were held.

Public comment:

One written comment was received. This comment suggested that rules should be more stringent than proposed. Requirements for facilities that would be authorized under the PBR are nearly identical to other facilities that receive similar wastes; therefore, no changes were made to the rule.

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Significant changes from proposal:

No significant changes were made.

Potential controversial concerns and legislative interest:

Without the opportunity this rule would afford municipalities, many affected communities would not dispose of these materials because they do not have funding to transport and dispose of these wastes at existing landfills. However, owners and operators of authorized landfills may perceive that this PBR presents an alternative that could potentially impact their business.

Does this rulemaking affect any current policies or require development of new policies? No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

If rulemaking does not go forward the commission would fail to meet a legislated directive under Senate Bill 1258 and the resulting THSC, §361.126. There are no apparent alternatives to this rulemaking.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: February 24, 2012

Anticipated Texas Register publication date: August 10, 2012

Anticipated effective date: August 16, 2012

Six-month Texas Register filing deadline: August 24, 2012

Agency contacts:

Steve Odil, Rule Project Manager, 239-4568, Waste Permits Division

Anthony Tatu, Staff Attorney, 239-5778

Bruce McAnally, Texas Register Coordinator, 239-2141

Attachments

Senate Bill 1258

cc: Chief Clerk, 2 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Anne Idsal
Curtis Seaton
Tucker Royall
Office of General Counsel
Ashley Forbes
Steve Odil
Bruce McAnally

The Texas Commission on Environmental Quality (commission) adopts the amendment to §330.7 *with change* as published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1191).

Background and Summary of the Factual Basis for the Adopted Rule

Senate Bill (SB) 1258, 82nd Legislature, 2011, added Texas Health and Safety Code (THSC), §361.126. This statute allows the commission to issue a permit by rule (PBR) to authorize certain counties or municipalities to dispose of demolition waste from nuisance or abandoned buildings.

The commission is adopting this rulemaking to provide a new PBR to authorize a county or municipality with a population of 10,000 people or less to dispose of demolition waste from properties with nuisance or abandoned buildings that have been acquired by the county or municipality by means of bankruptcy, tax delinquency, or condemnation on land that is owned or controlled by the county or municipality and that would qualify for an arid exemption under commission rules.

Section Discussion

The commission adopts administrative changes throughout this section to be consistent with Texas Register requirements and other agency rules.

The commission adopts the amendment to §330.7. Adopted subsection (i) creates a PBR for a county or municipality with a population of 10,000 people or less. The PBR authorizes disposal of materials that meet the limitations of §330.5(a)(2), from properties with nuisance and abandoned buildings that have been acquired by the county or municipality by means of bankruptcy, tax delinquency, or condemnation. The previous owners of the properties must be financially incapable of paying the costs of disposal of the demolition waste at a permitted solid waste disposal facility, including transportation of the waste to the facility.

Disposal must occur on property that is owned or controlled by the county or municipality and would qualify for an arid exemption. To satisfy the executive director that disposal will occur on land that would qualify for an arid exemption, the county or municipality must demonstrate that the property meets the requirements of §330.63(d)(5)(D), which requires that the location receive less than or equal to 25 inches of average annual precipitation based on data from the nearest official precipitation recording station for the most recent 30-year period. The executive director may allow alternative methods of demonstrating the rainfall requirement.

The demonstration that a property would qualify for an arid exemption would not include all provisions of §330.63(d)(5); therefore, facilities authorized under the adopted PBR are not arid-exempt landfills. For example, facilities authorized under this

PBR are not limited to a disposal rate of 20 tons per day, as are arid-exempt landfills.

Asbestos-containing materials may be found in abandoned structures addressed by this rule. The abatement of these materials is regulated by the Texas Department of State Health Services, not the commission. Therefore, the adopted subsection requires that structures to be demolished for disposal under this authorization be surveyed and abated, if required, for asbestos-containing materials in accordance with 25 TAC Chapter 295, Subchapter C.

Acceptable wastes for disposal under this PBR include all materials meeting the limitations of §330.5(a)(2) and not excluded under §330.15(e), from property on which an abandoned or nuisance building is located. This allows disposal of brush, litter and other debris from the properties containing the abandoned or nuisance building, to the extent that they are authorized.

The authorizing statute directs the commission to adopt rules to control the collection, handling, storage, processing and disposal of demolition wastes to protect public and private property, rights-of-way, groundwater, and any other right that requires protection. The provisions discussed below address this charge.

The purpose of the adopted PBR is to address a short-term issue currently facing small

West Texas communities. This is expected to consist of specific projects of short duration. As such, the commission limits the term on the PBR to a period of five years.

The adopted PBR authorizes disposal of regulated asbestos-containing materials (RACM) and non-regulated asbestos-containing materials (non-RACM) that result from the demolition of abandoned and nuisance structures. The adopted rule includes handling requirements for each of these materials, including requirements to place six inches of soil cover, immediately over disposed RACM and at the end of the operating day over disposed non-RACM. A rule reference error regarding deed recordation within these requirements was corrected.

The adopted PBR requires access control by fences and other artificial or natural barriers, including a locking gate, and a buffer zone of at least 50 feet between the permit boundary and waste management activities. Waste management activities are not allowed within a utility or pipeline easement and no closer than 25 feet from the centerline of these easements. Facilities operating under this authorization are required to post a sign that provides 24-hour emergency contact information and states that the facility is not open to the public.

The adopted PBR requires that the 25-year/24-hour storm event be controlled by berms to prevent stormwater from entering trenches that have received waste. The permittee is

required to consider water that has contacted waste to be contaminated water and to dispose of it at a facility authorized to accept this waste.

Under the adopted PBR, disposal may only occur below grade. The facility is required to place at least two feet of compacted soil as final cover. The rule provides schedules for placement of final cover and for notifications to the executive director and the applicable regional office. Deed recordation is required in accordance with §330.19. The rule requires that final contours, after installation of final cover, be at pre-existing grades or up to three feet above pre-existing grades. The PBR allows any trench that has received waste to be inactive for up to 180 days. Before the 180-day limit is reached, the rule requires that intermediate cover or final cover be placed. The commission invited public comment on potential positive or negative impacts that could occur as a result of the requirement for placement of intermediate or final cover after six months of inactivity. No comments were received on this provision.

The volume of waste disposed may not exceed 2.5 million cubic meters. This volume is not expected to limit the capacity of units authorized under the adopted PBR, but ensures that authorized activities qualify under an air emissions PBR in accordance with 30 TAC §106.534(3).

The facilities authorized under the PBR must cover waste at least weekly with six inches

of soil, or with tarps. The executive director evaluated alternative daily cover (ADC) options and concluded, based on cost and complexity, that tarps are the only practical ADC for the adopted PBR. Authorization of ADC for a waste unit is typically provided through a temporary authorization and subsequent modification. As modification of a PBR is impractical, the adopted PBR authorizes the use of tarps as ADC. The PBR limits tarp use to seven days, at which time waste, soil cover, intermediate cover, or final cover is required. The commission invited public comment on potential positive or negative impacts that could occur as a result of a seven-day limitation on tarp use. No comments were received on this provision.

Adopted subsection (i) requires annual reporting in accordance with §330.675(a), but exempts facilities authorized under the adopted PBR from fee requirements of Chapter 330, Subchapter P.

Adopted subsection (i) establishes notification, deed recordation, and reporting requirements for closure of the facility.

Adopted subsection (i) authorizes processing of waste destined for a unit authorized under the adopted PBR. Authorized processing is limited to volume-reduction activities, such as chipping or grinding, but not burning. Processing may only occur within the permit boundary, but not within a buffer zone or right-of-way. The processing of tires,

RACM and non-RACM is prohibited under this authorization.

Draft Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rule is not subject to §2001.0225, because the rule does not meet the criteria for a "major environmental rule" as defined in that statute.

A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the adopted rule is to provide a new PBR to authorize a county or municipality with a population of 10,000 people or less to dispose of demolition waste from properties with nuisance or abandoned buildings. It is not anticipated that the rule will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that the adopted rule does not meet the definition of major environmental rule.

Furthermore, even if the adopted rule did meet the definition of a major environmental rule, the rule is not subject to Texas Government Code, §2001.0225, because it does not meet any of the four applicable requirements specified in §2001.0225(a). Texas Government Code, §2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed 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) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rule does not meet any of these requirements. First, there are no federal standards specifically for these types of facilities. Second, the rule does not exceed an express requirement of state law in THSC, §§361.0641, 361.0665, and 361.079. Third, there is no delegation agreement that would be exceeded by the rule. Fourth, the commission adopts this rule under the specific authority of THSC, §361.126. This rulemaking is also adopted under the authority of THSC, §§361.011, 361.017, and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act. Therefore, the commission does not adopt the rule solely under the commission's general powers.

Takings Impact Assessment

The commission evaluated the rule and performed an assessment of whether the rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The specific intent of the adopted rule is to provide a new PBR to authorize a county or municipality with a population of 10,000 people or less to dispose of demolition waste from properties with nuisance or abandoned buildings. The adopted rule substantially advances this stated purpose by establishing requirements relating to facility locations, sources of waste, waste acceptance, access control, buffers and easements, cover, maximum volume, signage, and closure.

Promulgation and enforcement of the rule would be neither a statutory nor a constitutional taking of private real property because the rule does not affect private real property.

In particular, there are no burdens imposed on private real property. In addition, the adopted rulemaking does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, this adopted rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed this adopted rulemaking action and determined that the adopted rule is neither identified in, nor will it affect, any action/authorization identified in Coastal Coordination Act Implementation Rules in 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP). Therefore, the adopted rulemaking action is not subject to the CMP.

The commission invited public comment regarding the consistency with the Coastal Management Program during the public comment period. No comments were received on the Coastal Management Program.

Public Comment

The commission held a public hearing on March 22, 2012, in Austin. No comments were provided at the public hearing. The comment period closed on March 26, 2012. The commission received one comment by an individual, during the comment period. This comment was not opposed to the proposed rule, but encouraged more restrictive requirements.

Response to Comments

The individual commented that the proposed rule does not adequately protect human health and the environment.

THSC, §361.126 allows the commission to issue a PBR for small communities to dispose of relatively inert materials (demolition debris, brush and rubbish) from abandoned or nuisance buildings that they have acquired by bankruptcy, tax delinquency, or condemnation. These communities must be located in areas of Texas that receive less than 25 inches of rainfall annually, on average. The commission placed requirements on these facilities that are nearly identical to those on Type IV arid-exempt landfills. Type IV arid-exempt landfills are also located in areas of Texas that receive less than 25 inches of rainfall annually, on average, and typically receive demolition debris, brush and rubbish. The main difference between landfills authorized under the adopted PBR and Type IV arid-exempt landfills is that the PBR allows disposal of RACM. To protect human health and the environment, the adopted PBR includes requirements for transportation and deed recordation of RACM that are consistent with requirements for other landfills authorized to receive RACM. Adopted cover requirements meet National Emissions Standards for Hazardous Air Pollutants requirements for disposal of RACM. The commission believes that the requirements for the adopted PBR are protective of human health and the environment. No changes were made to the proposed rule in response to this comment.

SUBCHAPTER A: GENERAL INFORMATION

§330.7

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and under Texas Health and Safety Code (THSC), §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction; THSC, §361.024, which provides the commission with rulemaking authority; and THSC, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste.

The amendment is also adopted under THSC, §361.126, which authorizes the commission to create a permit by rule to authorize a county or municipality with a population of 10,000 or less to dispose of demolition waste from abandoned or nuisance buildings acquired by the county or municipality by bankruptcy, tax delinquency, or condemnation.

The adopted amendment implements THSC, §361.002, Policy and Findings; THSC, §361.011, Commission's Jurisdiction, Municipal Solid Waste; THSC, §361.024, Rules and Standards and THSC, §361.061, Permits. The adopted amendment also implements TWC, §5.103, Rules.

§330.7. Permit Required.

(a) Except as provided in §§330.9, 330.11, 330.13, or 330.25 of this title (relating to Registration Required; Notification Required; Waste Management Activities Exempt from Permitting, Registration, or Notification; and Relationship with County Licensing System), no person may cause, suffer, allow, or permit any activity of storage, processing, removal, or disposal of any solid waste unless such activity is authorized by a permit or other authorization from the commission. In the event this requirement is violated, the executive director may seek recourse against not only the person that stored, processed, or disposed of the waste but also against the generator, transporter, owner or operator, or other person who caused, suffered, allowed, or permitted its waste to be stored, processed, or disposed. No person may commence physical construction of a new municipal solid waste (MSW) management facility, a vertical expansion, or a lateral expansion without first having submitted a permit application in accordance with §§330.57, 330.59, 330.61, 330.63, and 330.65 of this title (relating to Permit and Registration Applications for Municipal Solid Waste Facilities; Contents of Part I of the

Application; Contents of the Part II of the Application; Contents of Part III of the Application; and contents of Part IV of the Application, respectively [Permit and Registration Application Procedures]) and received a permit from the commission, except as provided otherwise in this section.

(b) A separate permit is required for the storage, transportation, or handling of used oil mixtures collected from oil/water separators. Any person that intends to conduct such activity shall comply with the regulatory requirements of Chapter 324 of this title (relating to Used Oil Standards).

(c) Permits by rule may be granted for persons that compact or transport waste in enclosed containers or enclosed transportation units to a Type IV facility.

(1) A permit by rule is granted for a generator operating a stationary compactor that is only used to compact waste to be disposed of at a Type IV landfill, if all of the following conditions are met.

(A) The generator submits the following information and any requested additional information on forms provided by the executive director:

(i) generator contact person, company name, mailing address, street address, city, state, ZIP code, and telephone number;

(ii) contract renewal date, if applicable;

(iii) rated compaction capability in pounds per cubic yard;

(iv) container size;

(v) description of waste stream to enter compactor;

(vi) receiving MSW Type IV disposal facility name, permit number, mailing address, street address, city, state, ZIP code, telephone number, and contact person; and

(vii) a certification from the generator that states the following: I, (name) _____, (title)

_____ of (company name)

_____, located at (street address)

_____ in (city)

_____, certify that the contents

of the compactor located at the location stated herein are free of and shall be maintained free of putrescible, hazardous, infectious, and any other waste not allowed in an MSW Type IV landfill.

(B) The generator submits a \$75 fee along with the claim for the permit by rule.

(C) The generator complies with the operational requirements of §330.215 of this title (relating to Requirements for Stationary Compactors).

(D) A stationary compactor permit by rule expires after one year. The generator must submit an annual renewal fee in the amount of \$75. Failure to timely pay the annual fee eliminates the option of disposal of these wastes at a Type IV landfill until the generator claims a new or renewed permit by rule.

(2) A permit by rule is granted for transporters using enclosed containers or enclosed vehicles to collect and transport brush, construction or demolition wastes, and rubbish along special collection routes to MSW Type IV landfill facilities if all of the following conditions are met.

(A) The owner or operator seeking a special collection route permit by rule submits to the executive director the following information and any requested additional information on forms provided by the executive director:

(i) name of owner and operator, mailing address, street address, city, state, ZIP code, name and title of a contact person, and telephone number;

(ii) receiving MSW Type IV disposal facility name, permit number, mailing address, street address, city, state, ZIP code, telephone number, and contact person;

(iii) information on each transportation unit, including, at a minimum, license number, vehicle identification number, year model, make, capacity in cubic yards, and rated compaction capability in pounds per cubic yard;

(iv) route information, which shall include as a minimum the collection frequency, the day of the week the route is to be collected, and the day and time span within which the route is to arrive at the MSW Type IV landfill;

(v) a description of the wastes to be transported;

(vi) an alternative contingency disposal plan to include alternate trucks to be used or alternative disposal facilities; and

(vii) a signed and notarized certification from the owner or operator that states the following: I, (name) _____, (title) _____, of _____ operating in _____ County, certify that the contents of the vehicles described above will be free of putrescible, household, hazardous, infectious, or any other waste not allowed in an MSW Type IV landfill.

(B) The transporter submits a \$100 per vehicle fee along with the claim for a permit by rule.

(C) The transporter documents each load delivered with a trip ticket form provided by the executive director, and provides the trip ticket to the landfill operator prior to discharging the load.

(D) A special collection route permit by rule expires after one year. The owner or operator must submit an annual renewal fee in the amount of \$100 per vehicle. Failure to timely pay the annual fee eliminates the option of disposal of these wastes at a Type IV landfill until the owner or operator claims a new or renewed permit by rule.

(E) This paragraph does not apply if the waste load is from a single collection point that is a stationary compactor authorized in accordance with paragraph (1) of this subsection.

(3) Revision requirements for stationary compactor permits or special collection route permits by rule identified in paragraphs (1) and (2) of this subsection are as follows.

(A) An update must be submitted if any information within the original permit by rule submittal changes.

(B) A submittal to update an existing permit by rule must include all of the same documentation required for an original permit by rule submittal.

(d) A major permit amendment, as defined by §305.62 of this title (relating to Amendments), is required to reopen a Type I, Type IAE, Type IV, or Type IVAE MSW facility permitted by the commission or any of its predecessor or successor agencies that has either stopped accepting waste, or only accepted waste in accordance with an emergency authorization, for a period of five years or longer. The MSW facilities covered by this subsection may not be reopened to accept waste again unless the permittee

demonstrates compliance with all applicable requirements of the Resource Conservation and Recovery Act, Subtitle D and the implementing Texas state regulations. If an MSW facility was subject to a contract of sale on January 1, 2001, the scope of any public hearing held on the permit amendment required by this subsection is limited to land use compatibility, as provided by §330.57(a) of this title [(relating to Permit and Registration Applications for Municipal Solid Waste Facilities)]. This subsection does not apply to any MSW facility that has received a permit but never received waste, or that received an approved Subtitle D permit modification before September 1, 2001.

(e) A permit by rule is granted for an animal crematory that meets the following criteria. For facilities that do not meet all the requirements of this subsection, the owner or operator shall submit a permit application under §§330.57, 330.59, 330.61, 330.63, and 330.65 of this title and obtain a permit. To qualify for a permit by rule under this subsection, the following requirements must be met.

(1) General prohibitions. An animal crematory facility shall comply with §330.15(a) of this title (relating to General Prohibitions).

(2) Incineration limits. Incineration of carcasses shall be limited to the conditions specified in §106.494 of this title (relating to Pathological Waste Incinerators (Previously SE 90)). The facility shall not accept animal carcasses that weigh more than

the capacity of the largest incinerator at the facility and shall not dismember any carcasses during processing.

(3) Ash control. Ash disposal must be at an authorized facility unless the ash is returned to the animal owner or sent to a pet cemetery. Ash shall be stored in an enclosed container that will prevent release of the ash to the environment. There shall be no more than 2,000 pounds of ash stored at an animal crematory at any given time.

(4) Air pollution control. Air emissions from the facility shall not cause or contribute to a condition of air pollution as defined in Texas Clean Air Act, §382.003. All animal crematories, prior to construction or modification, must have an air permit issued under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), or qualify for a permit by rule under §106.494 of this title.

(5) Fire protection. The facility shall prepare, maintain, and follow a fire protection plan. This fire protection plan shall describe fire protection resources (a local fire department, fire hydrants, fire extinguishers, water tanks, water well, etc.), and employee training and safety procedures. The fire protection plan shall comply with local fire codes.

(6) Storage limits. Carcasses must be incinerated within two hours of receipt, unless stored at or below a temperature of 29 degrees Fahrenheit. Storage of carcasses shall be in a manner that minimizes the release of odors. Storage of carcasses shall be limited to the lesser of 3,200 pounds or the amount that can be incinerated at the maximum loading rate for the incinerators at the facility in a two-day period.

(7) Unauthorized waste. Only carcasses or animal parts, with any associated packaging, shall be processed. Carcasses shall not be accepted in packaging that includes any chlorinated plastics. Carcasses or animal parts that are either hazardous waste or medical waste are prohibited.

(8) Cleaning. Storage and processing units must be properly cleaned on a routine basis to prevent odors and the breeding of flies.

(9) Nuisance prevention. The facility shall be designed and operated in a manner so as to prevent nuisance conditions, including, but not limited to, dust from ashes, disease vectors, odors, and liquids from spills, from being released from the property boundary of the authorized facility.

(10) Diseased animals. The facility shall be equipped with appropriate protective equipment and clothing for personnel handling diseased animals that may be

received at the facility. Facility owners or operators must inform customers and local veterinarians of the need to identify diseased animals for the protection of personnel handling the animals.

(11) Buffer zone. An animal crematory, including unloading and storage areas, constructed after March 2, 2003, must be at least 50 feet from the property boundary of the facility.

(12) Operating hours. A crematory shall operate within the time frames allowed by §111.129 of this title (relating to Operating Requirements).

(13) Documentation. The operator of an animal crematory shall document the carcasses' weight, date and time when carcasses are received, and when carcasses are loaded into the incinerator. A separate entry in the records for loading into the incinerator is not required if a carcass is loaded within two hours of receipt. This information will be maintained in records on site.

(14) Breakdown. The facility is subject to §330.241 of this title (relating to Overloading and Breakdown).

(15) Records management. The owner or operator must retain records as follows:

(A) maintain a copy of all requirements of this subsection that apply to the facility;

(B) maintain records for the previous consecutive 12-month period containing sufficient information to demonstrate compliance with all requirements of this subsection;

(C) keep all required records at the facility; and

(D) make the records available upon request to personnel from the commission or from local governments with jurisdiction over the facility.

(16) Fees. An animal crematory facility authorized under this section is exempt from the fee requirements of Subchapter P of this chapter (relating to Fees and Reporting).

(17) Other requirements. No other requirements under this chapter are applicable to a facility that meets all of the requirements of this subsection.

(f) A permit by rule is granted for a dual chamber incinerator if the owner or operator complies with §106.491 of this title (relating to Dual-Chamber Incinerators).

(g) A permit by rule is granted for an air curtain incinerator if the owner or operator complies with §106.496 of this title (relating to Air Curtain Incinerators). An air curtain incinerator may not be located within 300 feet of an active or closed MSW landfill unit boundary.

(h) A standard air permit is granted for facilities that comply with Subchapter U of this chapter (relating to Standard Air Permits for Municipal Solid Waste Landfill Facilities and Transfer Stations).

(i) A permit by rule is granted for a period of up to five years to a county or municipality with a population of 10,000 people or less to dispose of demolition waste from properties with nuisance or abandoned buildings.

(1) Requirements. The following conditions must be met.

(A) Form submittal. The county or municipality submits a form provided by the commission to the executive director for review and approval before construction begins.

(B) Notice to regional office. The county or municipality notifies the applicable commission regional office of the intent to dispose of waste under this authorization at least 48 hours prior to accepting the first load of waste.

(C) Facility location. The location where disposal will occur:

(i) is owned or controlled by the county or municipality, and

(ii) receives less than or equal to 25 inches average annual precipitation as determined from precipitation data for the nearest official precipitation recording station for at least the most recent 30-year reporting period or by another method approved by the executive director.

(D) Sources of waste. The properties on which nuisance and abandoned buildings are located have been acquired by the county or municipality by means of bankruptcy, tax delinquency, or condemnation, and the previous owners are not financially capable of paying the costs of the disposal of demolition waste at a

permitted solid waste disposal facility, including transportation of the waste to the facility.

(E) Waste acceptance.

(i) Prior to demolition, structures are surveyed and abated, if required, for asbestos-containing materials in accordance with 25 TAC Chapter 295, Subchapter C (relating to Texas Asbestos Health Protection).

(ii) The facility may accept non-regulated asbestos-containing materials (non-RACM) for disposal. The wastes are placed on the active working face and covered at the end of the operating day with at least six inches of soil. Under no circumstances may any of the material containing non-RACM be placed on a surface that is subject to vehicular traffic or disposed of by any other means by which the material could be crumbled into a friable state.

(iii) The facility may accept regulated asbestos-containing materials (RACM) if the following conditions are met.

(I) The county or municipality notifies the executive director on a form provided by the commission in accordance with subparagraph (A) of this paragraph.

(II) All waste trenches are identified as receiving RACM, and deed records required under subparagraph (Q) ~~(P)~~(i) of this paragraph include an indication that the waste trench(es) received RACM.

(III) RACM is transported and received at the facility in tightly closed and unruptured containers or bags or wrapped with at least six-mil polyethylene.

(IV) Bags or containers holding RACM are carefully unloaded and placed in the final disposal location. RACM is then covered immediately with at least six inches of soil. Care is taken during unloading and placement of RACM and during application of the cover so that the bags or containers are not ruptured.

(iv) Waste is limited to the abandoned or nuisance buildings and materials from the property on which the buildings are located. All waste disposed under this authorization must meet the limitations of §330.5(a)(2) of this title (relating

to Classification of Municipal Solid Waste Facilities) and may not include waste prohibited under §330.15(e) of this title.

(F) Access control. Access to the disposal facility is controlled by means of fences, other artificial barriers, natural barriers, or a combination of these methods, and includes a locking gate.

(G) Buffers and easements. The county or municipality maintains a minimum distance of 50 feet as a buffer between the permit boundary and waste storage, processing and disposal areas. No disposal occurs within a utility or pipeline easement or within 25 feet of the center of a utility or pipeline easement.

(H) Below-grade placement. Waste is placed only below grade. The top of final cover is placed at pre-existing grade or up to three feet above pre-existing grade to ensure that natural drainage patterns are not altered and ponding of water over waste is prevented.

(I) Weekly cover. Waste is covered at least weekly with six inches of earthen material not previously mixed with waste, or by tarps. Use of tarps as cover is limited to a seven-day period after which the county or municipality must replace the tarp with either waste or a six-inch layer of earthen material not previously mixed with

waste. Tarps may not be used in place of soil cover requirements relating to non-RACM and RACM in subparagraph (E) (ii) and (iii) of this paragraph. Any trench that has received waste but will be inactive for more than 180 days receives intermediate cover in accordance with subparagraph (J) of this paragraph, or final cover in accordance with subparagraph (P) of this paragraph.

(J) Intermediate cover. Waste is covered, including any soil weekly cover, with twelve inches of well compacted earthen material not previously mixed with waste.

(K) Maximum volume. The design waste disposal volume is less than 2.5 million cubic meters in accordance with §106.534(3) of this title (relating to Municipal Solid Waste Landfills and Transfer Stations).

(L) Facility signs. At all entrances through which waste is received, the facility conspicuously displays a sign with letters at least three inches in height providing a statement that the facility is "NOT FOR PUBLIC USE," an emergency 24-hour contact number that reaches an individual with the authority to obligate the facility at all times that the facility is not in operation, and the local emergency fire department number.

(M) **Stormwater** ~~Storm water~~ and contaminated water. The county or municipality constructs berms to divert the 25-year/24-hour storm event from entering excavations containing waste. Water that has contacted waste is managed as contaminated water and disposed at an authorized treatment facility.

(N) Reporting. The county or municipality, while not required to provide quarterly reporting, provides annual reporting in accordance with the annual reporting provisions of §330.675(a) of this title (relating to Reports).

(O) Reauthorization. Before reaching the permit by rule term limit of five years, the county or municipality may request reauthorization under the permit by rule by submitting a form that is current at the time of reauthorization, provided by the commission in accordance with subparagraph (A) of this paragraph, to the executive director at least 14 days before the end of the permit term.

(P) Final cover. The following conditions are met.

(i) Within 60 days after a trench reaches its capacity or waste deposition activities are complete in a trench, the county or municipality installs final cover over waste in the trench. Final cover shall be composed of no less than two feet of soil. The first 18 inches or more of cover shall be of compacted clayey soil, classification

sand clay (SC) or low plasticity clay (CL) as defined in the "Unified Soils Classification System" developed by the United States Army Corps of Engineers, and placed and compacted in layers of no more than six inches to minimize the potential for water infiltration. A high plasticity clayey (CH) soil may be used; however, this soil may experience excessive cracking and shall therefore be covered by a minimum of 12 inches of topsoil to retain moisture. Other types of soil may be used with prior written approval from the executive director. The final six inches of cover shall be of suitable topsoil that is capable of sustaining native plant growth and shall be seeded or sodded as soon as practicable following the application of the final cover in order to minimize erosion.

(ii) The trench final cover procedures listed in clause (i) of this subparagraph are completed before facility closure, as described in subparagraph (Q) of this paragraph. If these procedures cannot be performed before the permit by rule term limit is reached, the county or municipality submits a current application form for reauthorization of the permit by rule to the executive director at least 14 days before the end of the permit term.

(Q) Facility closure. The county or municipality notifies the executive director and the applicable regional office at least 60 days before the anticipated closure date of the facility. Within ten days after closure, submit to the executive director by registered mail a certified copy of an "affidavit to the public" in

accordance with the requirements of §330.19 of this title (relating to Deed Recordation).

In addition, record a certified notation of the deed to the facility property, or on some other instrument that is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that the land has been used as a landfill facility and use of the land is restricted. Submit a certified deed to the executive director.

(2) Other provisions. The following provisions also apply to this authorization.

(A) Processing. This permit by rule also authorizes the processing of waste destined for the disposal unit. Authorized processing is limited to volume reduction, such as chipping or grinding, but not burning. Processing must occur within the permit boundary and may not occur within a buffer zone or right-of-way. Tires, RACM and non-RACM may not be processed. If required, the county or municipality must obtain authorization for air emissions resulting from this processing.

(B) Fees. Waste that is disposed under this authorization is not subject to the fee requirements of Subchapter P of this chapter.

(C) Other requirements. No other requirements under this chapter are applicable to a facility that meets all the requirements of this subsection.



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

ORDER ADOPTING AMENDED RULE

Docket No. 2011-1266-RUL

On July 25, 2012, the Texas Commission on Environmental Quality (Commission) adopted amended § 330.7 in 30 TAC Chapter 330, concerning Municipal Solid Waste. The proposed amendment was published for comment in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1191).

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended rule is hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with Texas Register requirements. The adopted rule and the preamble to the adopted rule are incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Government Code, § 2001.033.

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

Issued date:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman

adjacent to water in the state so that it may be subsequently beneficially used.

(57) Water conservation plan--A strategy or combination of strategies for reducing the volume of water withdrawn from a water supply source, for preventing or reducing the loss or waste of water, for maintaining or improving the efficiency in the use of water, for increasing the recycling and reuse of water, and for preventing the pollution of water. A water conservation plan may be a separate planning document or may be contained within another water management document(s).

(58) Water in the state--Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(59) Watercourse--A definite channel of a stream in which water flows within a defined bed and banks, originating from a definite source or sources. (The water may flow continuously or intermittently, and if the latter with some degree of regularity, depending on the characteristics of the sources.)

(60) Water right--A right or any amendment thereto acquired under the laws of this state to impound, divert, store, convey, take, or use state water.

(61) Watershed--A term used to designate the area drained by a stream and its tributaries, or the drainage area upstream from a specified point on a stream.

(62) Water supply--Any body of water, whether static or moving, either on or under the surface of the ground, available for beneficial use on a reasonably dependable basis.

(63) Wetland--An area (including a swamp, marsh, bog, prairie pothole, playa, or similar area) having a predominance of hydric soils that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal circumstances supports the growth and regeneration of hydrophytic vegetation. The term "hydric soil" means soil that, in its undrained condition is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation. The term "hydrophytic vegetation" means a plant growing in water or a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content. The term "wetland" does not include:

- (A) irrigated acreage used as farmland;
- (B) man-made wetlands of less than one acre; or

(C) man-made wetlands not constructed with wetland creation as a stated objective, including, but not limited to, impoundments made for the purpose of soil and water conservation which have been approved or requested by soil and water conservation districts. This definition does not apply to man-made wetlands described under this subparagraph constructed or created on or after August 28, 1989. If this definition conflicts with the federal definition in any manner, the federal definition prevails.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 10, 2012.

TRD-201200731

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: March 25, 2012

For further information, please call: (512) 239-2141

CHAPTER 330. MUNICIPAL SOLID WASTE SUBCHAPTER A. GENERAL INFORMATION

30 TAC §330.7

The Texas Commission on Environmental Quality (commission) proposes an amendment to §330.7.

Background and Summary of the Factual Basis for the Proposed Rule

Senate Bill (SB) 1258, 82nd Legislature, 2011, added Texas Health and Safety Code (THSC), §361.126. This statute allows the commission to issue a permit by rule (PBR) to authorize certain counties or municipalities to dispose of demolition waste from nuisance or abandoned buildings.

The commission is proposing this rulemaking to provide a new PBR to authorize a county or municipality with a population of 10,000 people or less to dispose of demolition waste from properties with nuisance or abandoned buildings that have been acquired by the county or municipality by means of bankruptcy, tax delinquency, or condemnation on land that is owned or controlled by the county or municipality and that would qualify for an arid exemption under commission rules.

Section Discussion

The commission proposes to add §330.7(i). Proposed subsection (i) would create a PBR for a county or municipality with a population of 10,000 people or less. The PBR would authorize disposal of materials that meet the limitations of §330.5(a)(2), from properties with nuisance and abandoned buildings that have been acquired by the county or municipality by means of bankruptcy, tax delinquency, or condemnation. The previous owners of the properties must be financially incapable of paying the costs of disposal of the demolition waste at a permitted solid waste disposal facility, including transportation of the waste to the facility.

Disposal must occur on property that is owned or controlled by the county or municipality and would qualify for an arid exemption. To satisfy the executive director that disposal would occur on land that would qualify for an arid exemption, the county or municipality must demonstrate that the property meets the requirements of §330.63(d)(5)(D), which requires that the location receive less than or equal to 25 inches of average annual precipitation based on data from the nearest official precipitation recording station for the most recent 30-year period. The executive director could allow alternative methods of demonstrating the rainfall requirement.

The demonstration that a property would qualify for an arid exemption would not include all provisions of §330.63(d)(5); therefore, facilities authorized under the proposed PBR would not be arid-exempt landfills. For example, facilities authorized under

this PBR would not be limited to a disposal rate of 20 tons per day, as are arid-exempt landfills.

Asbestos-containing materials may be found in abandoned structures addressed by this rule. The abatement of these materials is regulated by the Texas Department of State Health Services, not the commission. Therefore, the proposed subsection would require that structures to be demolished under this authorization be surveyed and abated, if required, for asbestos-containing materials in accordance with 25 TAC Chapter 295, Subchapter C.

Acceptable wastes for disposal under this PBR would include all materials meeting the limitations of §330.5(a)(2) and not excluded under §330.15(e), from property on which an abandoned or nuisance building is located. This will allow disposal of brush, litter and other debris from the properties containing the abandoned or nuisance building, to the extent that they are authorized.

The authorizing statute directs the commission to adopt rules to control the collection, handling, storage, processing and disposal of demolition wastes to protect public and private property, rights-of-way, groundwater, and any other right that requires protection. The provisions discussed below are intended to address this charge.

The purpose of the proposed PBR is to address a short-term issue currently facing small West Texas communities. This is expected to consist of specific projects of short duration. As such, the commission proposes to limit the term on the PBR to a period of five years.

The proposed PBR would authorize disposal of regulated asbestos-containing materials (RACM) and non-regulated asbestos-containing materials (non-RACM) that result from the demolition of abandoned and nuisance structures. The proposed rule includes handling requirements for each of these materials, including a requirement to immediately place six inches of soil cover over RACM and to place six inches of soil over non-RACM at the end of the operating day.

The proposed PBR would require access control by fences and other artificial or natural barriers, including a locking gate, and a buffer zone of at least 50 feet between the permit boundary and waste management activities. Waste management activities will not be allowed within a utility or pipeline easement and no closer than 25 feet from the centerline of these easements. Facilities operating under this authorization would be required to post a sign that provides 24-hour emergency contact information and states that the facility is not open to the public.

The proposed PBR would require that the 25-year/24-hour storm event be controlled by berms to prevent storm water from entering trenches that have received waste. The permittee would be required to consider water that has contacted waste to be contaminated water and dispose of it at a facility authorized to accept this waste.

Under the proposed PBR, disposal may only occur below grade. The facility would be required to place at least two feet of compacted soil as final cover. The rule would provide schedules for placement of final cover and for notifications to the executive director and the applicable regional office. Deed recordation would be required in accordance with §330.19. The rule would require that final contours, after installation of final cover, be at pre-existing grades or up to three feet above pre-existing grades. The PBR would allow any trench that has received waste to be in-

active for up to 180 days. Before the 180-day limit is reached, the rule would require that intermediate cover or final cover be placed. The commission solicits comment on potential positive or negative impacts that could occur as a result of the requirement for placement of intermediate or final cover after six months of inactivity.

The volume of waste disposed could not exceed 2.5 million cubic meters. This volume is not expected to limit the capacity of units authorized under the proposed PBR, but ensures that authorized activities would qualify under an air emissions PBR in accordance with 30 TAC §106.534(3).

The facility would be required to cover waste at least weekly with six inches of soil, or with tarps. The executive director evaluated alternative daily cover (ADC) options and concluded, based on cost and complexity, that tarps are the only practical ADC for the proposed PBR. Authorization of ADC for a waste unit is typically provided through a temporary authorization and subsequent modification. As modification of a PBR is impractical, the proposed PBR would authorize the use of tarps as ADC. The PBR would limit tarp use to seven days, at which time waste, soil cover, intermediate cover, or final cover would be required. The commission solicits comment on potential positive or negative impacts that could occur as a result of a seven-day limitation on tarp use.

Proposed subsection (i) would require annual reporting in accordance with §330.675(a), but exempts facilities authorized under the proposed PBR from fee requirements of Chapter 330, Subchapter P.

Proposed subsection (i) would establish notification, deed recordation, and reporting requirements for closure of the facility.

Proposed subsection (i) would authorize processing of waste destined for a unit authorized under the proposed PBR. Authorized processing would be limited to volume-reduction activities, such as chipping or grinding, but not burning. Processing could only occur within the permit boundary, but not within a buffer zone or right-of-way. The processing of tires, RACM and non-RACM would be prohibited under this authorization.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government as a result of administration or enforcement of the proposed rule. The agency will utilize currently available resources to implement the proposed rule. Affected counties and municipalities may experience cost savings for the disposal of nuisance and abandoned buildings.

The proposed rule implements the provisions of SB 1258 and would provide a new PBR to authorize a county or municipality with a population of 10,000 people or less to dispose of demolition waste from properties with nuisance or abandoned buildings that have been acquired by the county or municipality by means of bankruptcy, tax delinquency, or condemnation on land that is owned or controlled by the county or municipality and that would qualify for an arid exemption under commission rules. The proposed PBR would allow qualifying municipalities and counties to dispose of demolition waste from nuisance or abandoned buildings without paying the tipping fees associated with disposal in a municipal solid waste (MSW) facility. There would be no fee charged for the proposed PBR. Qualifying local governments are

also expected to pay lower transportation costs since MSW facilities in the areas of the state that qualify for arid exemption can be long distances from an affected municipality or county.

Impact on Agency Revenue

The commission currently receives revenue from tipping fees when waste is disposed of in an MSW facility. The commission does not expect the proposed rule to significantly increase or decrease the amount of revenue it receives in Account 549 - Waste Management Account. Current tipping fees and transportation costs for disposal of nuisance or abandoned buildings can be unaffordable for municipalities and counties in the area of the state affected by the proposed rule, and tipping fees collected from these local governments for disposal of demolition waste from these buildings has been minimal. Since the proposed rule does not require a tipping fee for disposal or an application fee for the new PBR, the impact to agency revenue is expected to be neutral.

Impact to Qualifying Municipalities and Counties

Counties and municipalities in areas of the state that receive 25 inches or less of annual precipitation are not expected to experience a significant fiscal impact as a result of the proposed rule. The commission estimates that there could be as many as 630 municipalities and counties that might benefit under the proposed rule. The proposed rule does not mandate the disposal of certain nuisance or abandoned buildings, but it does offer a more affordable disposal option than any currently available. Most affected municipalities and counties do not have existing landfills and cannot afford to dispose of this type of waste under current rules. Disposal costs in Texas under the current rules average \$30.19 per ton for tipping fees. Waste in some instances could be transported for as much as 150 miles, and transportation costs could be as much as \$2.50 per mile. Many abandoned and nuisance buildings have not been demolished and disposed of as a result of these costs.

Qualifying counties and municipalities can request a new PBR and construct a facility that meets the requirements of the proposed rule instead of paying tipping fees and transportation costs that would currently be incurred to dispose of the waste in an MSW facility. There is no fee for the new PBR, and facilities authorized by it would not be limited to a disposal rate of 20 tons per day. Land utilized for a disposal facility must be owned or controlled by the county or municipality. Construction of a facility is not expected to significantly increase costs if qualifying counties or municipalities use currently available personnel and equipment. Using existing staff and equipment, construction costs for a facility meeting the requirements of the proposed rule could be as much as \$1.97 per cubic yard and \$1.80 per cubic yard for labor assuming trenches are 14 to 20 feet deep and the use of a one-cubic-yard excavator. If a six-foot-high fence is installed, costs could be as much as \$34.44 per linear foot plus \$1,200 for a 12-foot-wide gate. If construction costs are subcontracted, a municipality or county could pay 10% more than these estimated costs. Total construction costs would depend on a variety of factors including the size of the facility, but they are expected to be lower than the tipping fees and transportation costs paid under the current rules.

Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be a less expensive alternative for disposal of nuisance and abandoned

buildings in qualifying municipalities and counties that cannot afford current disposal options for this type of waste. The proposed rule could help reduce the number of buildings that have become unsafe or that possibly foster illegal activities in these communities.

The proposed rule is not expected to have a significant, direct fiscal impact on individuals or businesses in affected municipalities or communities. However, individuals and businesses in qualifying municipalities and counties should benefit from the reduction of abandoned or nuisance buildings if their municipality or county chooses to apply for the new PBR and take advantage of the new disposal options it affords. Benefits could include the elimination of structurally unsound properties, properties fostering illegal activities, and the possible return of properties to local tax roles. The fiscal impact of the proposed rule would depend on the circumstances of each municipality or county that chooses to apply for the new PBR.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. The proposed rule is expected to impact a small business in the same way that they impact individuals or large businesses.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule complies with state law and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rule is not subject to §2001.0225, because the rule does not meet the criteria for a "major environmental rule" as defined in that statute.

A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the proposed rule is to provide a new PBR to authorize a county or municipality with a population of 10,000 people or less to dispose of demolition waste from properties with nuisance or abandoned buildings. It is not anticipated that the rule will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that the proposed rule does not meet the definition of major environmental rule.

Furthermore, even if the proposed rule did meet the definition of a major environmental rule, the rule is not subject to Texas Government Code, §2001.0225, because it does not meet any of the

four applicable requirements specified in §2001.0225(a). Texas Government Code, §2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed 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) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rule does not meet any of these requirements. First, there are no federal standards specifically for these types of facilities. Second, the rule does not exceed an express requirement of state law in THSC, §§361.0641, 361.0665, and 361.079. Third, there is no delegation agreement that would be exceeded by the rule. Fourth, the commission proposes this rule under the specific authority of THSC, §361.126. This rulemaking is also proposed under the authority of THSC, §§361.011, 361.017, and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act. Therefore, the commission does not propose the rule solely under the commission's general powers.

Takings Impact Assessment

The commission evaluated the rule and performed an assessment of whether the rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The specific intent of the proposed rule is to provide a new PBR to authorize a county or municipality with a population of 10,000 people or less to dispose of demolition waste from properties with nuisance or abandoned buildings. The proposed rule will substantially advance this stated purpose by establishing requirements relating to facility locations, sources of waste, waste acceptance, access control, buffers and easements, cover, maximum volume, signage, and closure.

Promulgation and enforcement of the rule would be neither a statutory nor a constitutional taking of private real property because the rule does not affect private real property.

In particular, there are no burdens imposed on private real property. In addition, the proposed rulemaking does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, this proposed rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed this proposed rulemaking action and determined that the proposed rule is neither identified in, nor will it affect, any action/authorization identified in Coastal Coordination Act Implementation Rules in 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP). Therefore, the proposed rulemaking action is not subject to the CMP.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on March 22, 2012, at 2:00 p.m., in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Ms. Sandy Wong, Office of Legal Services at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2011-048-330-WS. The comment period closes March 26, 2012. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.texas.gov/nav/rules/propose_adopt.html. For further information, please contact Steve Odil, MSW Permits Section at (512) 239-4568.

Statutory Authority

The amended section is proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and under Texas Health and Safety Code (THSC), §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction; THSC, §361.024, which provides the commission with rulemaking authority; and THSC, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste.

The amendment is also proposed under THSC, §361.126, which authorizes the commission to create a permit by rule to authorize a county or municipality with a population of 10,000 or less to dispose of demolition waste from abandoned or nuisance buildings acquired by the county or municipality by bankruptcy, tax delinquency, or condemnation.

The proposed amendment implements THSC, §361.002, Policy and Findings; THSC, §361.011, Commission's Jurisdiction, Municipal Solid Waste; THSC, §361.024, Rules and Standards and THSC, §361.061, Permits. The proposed amendment also implements TWC, §5.103, Rules.

§330.7. Permit Required.

(a) Except as provided in §§330.9, 330.11, 330.13, or 330.25 of this title (relating to Registration Required; Notification Required; Waste Management Activities Exempt from Permitting, Registration, or Notification; and Relationship with County Licensing System), no person may cause, suffer, allow, or permit any activity of storage, processing, removal, or disposal of any solid waste unless such activity is authorized by a permit or other authorization from the commission. In the event this requirement is violated, the executive director may seek

recourse against not only the person that stored, processed, or disposed of the waste but also against the generator, transporter, owner or operator, or other person who caused, suffered, allowed, or permitted its waste to be stored, processed, or disposed. No person may commence physical construction of a new municipal solid waste (MSW) management facility, a vertical expansion, or a lateral expansion without first having submitted a permit application in accordance with §§330.57, 330.59, 330.61, 330.63, and 330.65 of this title (relating to Permit and Registration Applications for Municipal Solid Waste Facilities; Contents of Part I of the Application; Contents of the Part II of the Application; Contents of Part III of the Application; and contents of Part IV of the Application, respectively [~~Permit and Registration Application Procedures~~]) and received a permit from the commission, except as provided otherwise in this section.

(b) A separate permit is required for the storage, transportation, or handling of used oil mixtures collected from oil/water separators. Any person that intends to conduct such activity shall comply with the regulatory requirements of Chapter 324 of this title (relating to Used Oil Standards).

(c) Permits by rule may be granted for persons that compact or transport waste in enclosed containers or enclosed transportation units to a Type IV facility.

(1) A permit by rule is granted for a generator operating a stationary compactor that is only used to compact waste to be disposed of at a Type IV landfill, if all of the following conditions are met.

(A) The generator submits the following information and any requested additional information on forms provided by the executive director:

(i) generator contact person, company name, mailing address, street address, city, state, ZIP code, and telephone number;

(ii) contract renewal date, if applicable;

(iii) rated compaction capability in pounds per cubic yard;

(iv) container size;

(v) description of waste stream to enter compactor;

(vi) receiving MSW Type IV disposal facility name, permit number, mailing address, street address, city, state, ZIP code, telephone number, and contact person; and

(vii) a certification from the generator that states the following: I, (name) _____, (title) _____ of (company name) _____, located at (street address) _____ in (city) _____, certify that the contents of the compactor located at the location stated herein are free of and shall be maintained free of putrescible, hazardous, infectious, and any other waste not allowed in an MSW Type IV landfill.

(B) The generator submits a \$75 fee along with the claim for the permit by rule.

(C) The generator complies with the operational requirements of §330.215 of this title (relating to Requirements for Stationary Compactors).

(D) A stationary compactor permit by rule expires after one year. The generator must submit an annual renewal fee in the amount of \$75. Failure to timely pay the annual fee eliminates the option of disposal of these wastes at a Type IV landfill until the generator claims a new or renewed permit by rule.

(2) A permit by rule is granted for transporters using enclosed containers or enclosed vehicles to collect and transport brush, construction or demolition wastes, and rubbish along special collection routes to MSW Type IV landfill facilities if all of the following conditions are met.

(A) The owner or operator seeking a special collection route permit by rule submits to the executive director the following information and any requested additional information on forms provided by the executive director:

(i) name of owner and operator, mailing address, street address, city, state, ZIP code, name and title of a contact person, and telephone number;

(ii) receiving MSW Type IV disposal facility name, permit number, mailing address, street address, city, state, ZIP code, telephone number, and contact person;

(iii) information on each transportation unit, including, at a minimum, license number, vehicle identification number, year model, make, capacity in cubic yards, and rated compaction capability in pounds per cubic yard;

(iv) route information, which shall include as a minimum the collection frequency, the day of the week the route is to be collected, and the day and time span within which the route is to arrive at the MSW Type IV landfill;

(v) a description of the wastes to be transported;

(vi) an alternative contingency disposal plan to include alternate trucks to be used or alternative disposal facilities; and

(vii) a signed and notarized certification from the owner or operator that states the following: I, (name) _____, (title) _____, of _____ operating in _____ County, certify that the contents of the vehicles described above will be free of putrescible, household, hazardous, infectious, or any other waste not allowed in an MSW Type IV landfill.

(B) The transporter submits a \$100 per vehicle fee along with the claim for a permit by rule.

(C) The transporter documents each load delivered with a trip ticket form provided by the executive director, and provides the trip ticket to the landfill operator prior to discharging the load.

(D) A special collection route permit by rule expires after one year. The owner or operator must submit an annual renewal fee in the amount of \$100 per vehicle. Failure to timely pay the annual fee eliminates the option of disposal of these wastes at a Type IV landfill until the owner or operator claims a new or renewed permit by rule.

(E) This paragraph does not apply if the waste load is from a single collection point that is a stationary compactor authorized in accordance with paragraph (1) of this subsection.

(3) Revision requirements for stationary compactor permits or special collection route permits by rule identified in paragraphs (1) and (2) of this subsection are as follows.

(A) An update must be submitted if any information within the original permit by rule submittal changes.

(B) A submittal to update an existing permit by rule must include all of the same documentation required for an original permit by rule submittal.

(d) A major permit amendment, as defined by §305.62 of this title (relating to Amendments), is required to reopen a Type I, Type IAE, Type IV, or Type IVAE MSW facility permitted by the commis-

sion or any of its predecessor or successor agencies that has either stopped accepting waste, or only accepted waste in accordance with an emergency authorization, for a period of five years or longer. The MSW facilities covered by this subsection may not be reopened to accept waste again unless the permittee demonstrates compliance with all applicable requirements of the Resource Conservation and Recovery Act, Subtitle D and the implementing Texas state regulations. If an MSW facility was subject to a contract of sale on January 1, 2001, the scope of any public hearing held on the permit amendment required by this subsection is limited to land use compatibility, as provided by §330.57(a) of this title [~~(relating to Permit and Registration Applications for Municipal Solid Waste Facilities)~~]. This subsection does not apply to any MSW facility that has received a permit but never received waste, or that received an approved Subtitle D permit modification before September 1, 2001.

(e) A permit by rule is granted for an animal crematory that meets the following criteria. For facilities that do not meet all the requirements of this subsection, the owner or operator shall submit a permit application under §§330.57, 330.59, 330.61, 330.63, and 330.65 of this title and obtain a permit. To qualify for a permit by rule under this subsection, the following requirements must be met.

(1) General prohibitions. An animal crematory facility shall comply with §330.15(a) of this title (relating to General Prohibitions).

(2) Incineration limits. Incineration of carcasses shall be limited to the conditions specified in §106.494 of this title (relating to Pathological Waste Incinerators (Previously SE 90)). The facility shall not accept animal carcasses that weigh more than the capacity of the largest incinerator at the facility and shall not dismember any carcasses during processing.

(3) Ash control. Ash disposal must be at an authorized facility unless the ash is returned to the animal owner or sent to a pet cemetery. Ash shall be stored in an enclosed container that will prevent release of the ash to the environment. There shall be no more than 2,000 pounds of ash stored at an animal crematory at any given time.

(4) Air pollution control. Air emissions from the facility shall not cause or contribute to a condition of air pollution as defined in Texas Clean Air Act, §382.003. All animal crematories, prior to construction or modification, must have an air permit issued under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), or qualify for a permit by rule under §106.494 of this title.

(5) Fire protection. The facility shall prepare, maintain, and follow a fire protection plan. This fire protection plan shall describe fire protection resources (a local fire department, fire hydrants, fire extinguishers, water tanks, water well, etc.), and employee training and safety procedures. The fire protection plan shall comply with local fire codes.

(6) Storage limits. Carcasses must be incinerated within two hours of receipt, unless stored at or below a temperature of 29 degrees Fahrenheit. Storage of carcasses shall be in a manner that minimizes the release of odors. Storage of carcasses shall be limited to the lesser of 3,200 pounds or the amount that can be incinerated at the maximum loading rate for the incinerators at the facility in a two-day period.

(7) Unauthorized waste. Only carcasses or animal parts, with any associated packaging, shall be processed. Carcasses shall not be accepted in packaging that includes any chlorinated plastics. Carcasses or animal parts that are either hazardous waste or medical waste are prohibited.

(8) Cleaning. Storage and processing units must be properly cleaned on a routine basis to prevent odors and the breeding of flies.

(9) Nuisance prevention. The facility shall be designed and operated in a manner so as to prevent nuisance conditions, including, but not limited to, dust from ashes, disease vectors, odors, and liquids from spills, from being released from the property boundary of the authorized facility.

(10) Diseased animals. The facility shall be equipped with appropriate protective equipment and clothing for personnel handling diseased animals that may be received at the facility. Facility owners or operators must inform customers and local veterinarians of the need to identify diseased animals for the protection of personnel handling the animals.

(11) Buffer zone. An animal crematory, including unloading and storage areas, constructed after March 2, 2003, must be at least 50 feet from the property boundary of the facility.

(12) Operating hours. A crematory shall operate within the time frames allowed by §111.129 of this title (relating to Operating Requirements).

(13) Documentation. The operator of an animal crematory shall document the carcasses' weight, date and time when carcasses are received, and when carcasses are loaded into the incinerator. A separate entry in the records for loading into the incinerator is not required if a carcass is loaded within two hours of receipt. This information will be maintained in records on site.

(14) Breakdown. The facility is subject to §330.241 of this title (relating to Overloading and Breakdown).

(15) Records management. The owner or operator must retain records as follows:

(A) maintain a copy of all requirements of this subsection that apply to the facility;

(B) maintain records for the previous consecutive 12-month period containing sufficient information to demonstrate compliance with all requirements of this subsection;

(C) keep all required records at the facility; and

(D) make the records available upon request to personnel from the commission or from local governments with jurisdiction over the facility.

(16) Fees. An animal crematory facility authorized under this section is exempt from the fee requirements of Subchapter P of this chapter (relating to Fees and Reporting).

(17) Other requirements. No other requirements under this chapter are applicable to a facility that meets all of the requirements of this subsection.

(f) A permit by rule is granted for a dual chamber incinerator if the owner or operator complies with §106.491 of this title (relating to Dual-Chamber Incinerators).

(g) A permit by rule is granted for an air curtain incinerator if the owner or operator complies with §106.496 of this title (relating to Air Curtain Incinerators). An air curtain incinerator may not be located within 300 feet of an active or closed MSW landfill unit boundary.

(h) A standard air permit is granted for facilities that comply with Subchapter U of this chapter (relating to Standard Air Permits for Municipal Solid Waste Landfill Facilities and Transfer Stations).

(i) A permit by rule is granted for a period of up to five years to a county or municipality with a population of 10,000 people or less to dispose of demolition waste from properties with nuisance or abandoned buildings.

(1) Requirements. The following conditions must be met.

(A) Form submittal. The county or municipality submits a form provided by the commission to the executive director for review and approval before construction begins.

(B) Notice to regional office. The county or municipality notifies the applicable commission regional office of the intent to dispose of waste under this authorization at least 48 hours prior to accepting the first load of waste.

(C) Facility location. The location where disposal will occur:

(i) is owned or controlled by the county or municipality; and

(ii) receives less than or equal to 25 inches average annual precipitation as determined from precipitation data for the nearest official precipitation recording station for at least the most recent 30-year reporting period or by another method approved by the executive director.

(D) Sources of waste. The properties on which nuisance and abandoned buildings are located have been acquired by the county or municipality by means of bankruptcy, tax delinquency, or condemnation, and the previous owners are not financially capable of paying the costs of the disposal of demolition waste at a permitted solid waste disposal facility, including transportation of the waste to the facility.

(E) Waste acceptance.

(i) Prior to demolition, structures are surveyed and abated, if required, for asbestos-containing materials in accordance with 25 TAC Chapter 295, Subchapter C (relating to Texas Asbestos Health Protection).

(ii) The facility may accept non-regulated asbestos-containing materials (non-RACM) for disposal. The wastes are placed on the active working face and covered at the end of the operating day with at least six inches of soil. Under no circumstances may any of the material containing non-RACM be placed on a surface that is subject to vehicular traffic or disposed of by any other means by which the material could be crumbled into a friable state.

(iii) The facility may accept regulated asbestos-containing materials (RACM) if the following conditions are met.

(I) The county or municipality notifies the executive director on a form provided by the commission in accordance with subparagraph (A) of this paragraph.

(II) All waste trenches are identified as receiving RACM, and deed records required under subparagraph (P)(i) of this paragraph include an indication that the waste trench(es) received RACM.

(III) RACM is transported and received at the facility in tightly closed and unruptured containers or bags or wrapped with at least six-mil polyethylene.

(IV) Bags or containers holding RACM are carefully unloaded and placed in the final disposal location. RACM is then covered immediately with at least six inches of soil. Care is taken during unloading and placement of RACM and during application of the cover so that the bags or containers are not ruptured.

(iv) Waste is limited to the abandoned or nuisance buildings and materials from the property on which the buildings are located. All waste disposed under this authorization must meet the limitations of §330.5(a)(2) of this title (relating to Classification of Municipal Solid Waste Facilities) and may not include waste prohibited under §330.15(e) of this title.

(F) Access control. Access to the disposal facility is controlled by means of fences, other artificial barriers, natural barriers, or a combination of these methods, and includes a locking gate.

(G) Buffers and easements. The county or municipality maintains a minimum distance of 50 feet as a buffer between the permit boundary and waste storage, processing and disposal areas. No disposal occurs within a utility or pipeline easement or within 25 feet of the center of a utility or pipeline easement.

(H) Below-grade placement. Waste is placed only below grade. The top of final cover is placed at pre-existing grade or up to three feet above pre-existing grade to ensure that natural drainage patterns are not altered and ponding of water over waste is prevented.

(I) Weekly cover. Waste is covered at least weekly with six inches of earthen material not previously mixed with waste, or by tarps. Use of tarps as cover is limited to a seven-day period after which the county or municipality must replace the tarp with either waste or a six-inch layer of earthen material not previously mixed with waste. Tarps may not be used in place of soil cover requirements relating to non-RACM and RACM in subparagraph (E)(ii) and (iii) of this paragraph. Any trench that has received waste but will be inactive for more than 180 days receives intermediate cover in accordance with subparagraph (J) of this paragraph, or final cover in accordance with subparagraph (P) of this paragraph.

(J) Intermediate cover. Waste is covered, including any soil weekly cover, with twelve inches of well compacted earthen material not previously mixed with waste.

(K) Maximum volume. The design waste disposal volume is less than 2.5 million cubic meters in accordance with §106.534(3) of this title (relating to Municipal Solid Waste Landfills and Transfer Stations).

(L) Facility signs. At all entrances through which waste is received, the facility conspicuously displays a sign with letters at least three inches in height providing a statement that the facility is "NOT FOR PUBLIC USE," an emergency 24-hour contact number that reaches an individual with the authority to obligate the facility at all times that the facility is not in operation, and the local emergency fire department number.

(M) Storm water and contaminated water. The county or municipality constructs berms to divert the 25-year/24-hour storm event from entering excavations containing waste. Water that has contacted waste is managed as contaminated water and disposed at an authorized treatment facility.

(N) Reporting. The county or municipality, while not required to provide quarterly reporting, provides annual reporting in accordance with the annual reporting provisions of §330.675(a) of this title (relating to Reports).

(O) Reauthorization. Before reaching the permit by rule term limit of five years, the county or municipality may request reauthorization under the permit by rule by submitting a form that is current at the time of reauthorization, provided by the commission in accordance with subparagraph (A) of this paragraph, to the executive director at least 14 days before the end of the permit term.

(P) Final cover. The following conditions are met.

(i) Within 60 days after a trench reaches its capacity or waste deposition activities are complete in a trench, the county or municipality installs final cover over waste in the trench. Final cover shall be composed of no less than two feet of soil. The first 18 inches or more of cover shall be of compacted clayey soil, classification sand clay (SC) or low plasticity clay (CL) as defined in the "Unified Soils Classification System" developed by the United States Army Corps of Engineers, and placed and compacted in layers of no more than six inches to minimize the potential for water infiltration. A high plasticity clayey (CH) soil may be used; however, this soil may experience excessive cracking and shall therefore be covered by a minimum of 12 inches of topsoil to retain moisture. Other types of soil may be used with prior written approval from the executive director. The final six inches of cover shall be of suitable topsoil that is capable of sustaining native plant growth and shall be seeded or sodded as soon as practicable following the application of the final cover in order to minimize erosion.

(ii) The trench final cover procedures listed in clause (i) of this subparagraph are completed before facility closure, as described in subparagraph (Q) of this paragraph. If these procedures cannot be performed before the permit by rule term limit is reached, the county or municipality submits a current application form for reauthorization of the permit by rule to the executive director at least 14 days before the end of the permit term.

(Q) Facility closure. The county or municipality notifies the executive director and the applicable regional office at least 60 days before the anticipated closure date of the facility. Within ten days after closure, submit to the executive director by registered mail a certified copy of an "affidavit to the public" in accordance with the requirements of §330.19 of this title (relating to Deed Recordation). In addition, record a certified notation of the deed to the facility property, or on some other instrument that is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that the land has been used as a landfill facility and use of the land is restricted. Submit a certified deed to the executive director.

(2) Other provisions. The following provisions also apply to this authorization.

(A) Processing. This permit by rule also authorizes the processing of waste destined for the disposal unit. Authorized processing is limited to volume reduction, such as chipping or grinding, but not burning. Processing must occur within the permit boundary and may not occur within a buffer zone or right-of-way. Tires, RACM and non-RACM may not be processed. If required, the county or municipality must obtain authorization for air emissions resulting from this processing.

(B) Fees. Waste that is disposed under this authorization is not subject to the fee requirements of Subchapter P of this chapter.

(C) Other requirements. No other requirements under this chapter are applicable to a facility that meets all the requirements of this subsection.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 10, 2012.

TRD-201200733

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 25, 2012
For further information, please call: (512) 239-2141

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CHAPTER 331. UNDERGROUND INJECTION CONTROL

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§331.2, 331.14, 331.17, 331.18, 331.42 - 331.47, 331.61, 331.121, 331.142, 331.161, 331.162, 331.165, 331.168, 331.170, 331.171, and 331.206. The commission also proposes new §§331.241 - 331.251; and the repeal of §331.120.

Background and Summary of the Factual Basis for the Proposed Rules

The purpose of this rulemaking is to amend existing rules, add new rules, and develop guidance pertaining to the use of a Class I well for disposal of nonhazardous drinking water treatment residuals (DWTR) into a salt cavern in horizontally bedded or non-domal salt. This includes disposal of nonhazardous DWTR that contain naturally occurring radioactive material (NORM). For commercial disposal of DWTR containing NORM, a Class I well permit would be accompanied by a radioactive materials license. These proposed rules will provide an alternative for disposal of nonhazardous DWTR containing NORM within Texas. Currently, the only facilities licensed to dispose of these wastes are landfills located out-of-state.

The proposed rules include repeal of an obsolete rule requiring a comprehensive compliance summary for injection well permit applications submitted or pending on or after May 26, 2001 and before September 1, 2002. In addition, some editorial corrections are being proposed to provide for disposal of DWTR into a bedded salt formation.

The United States Environmental Protection Agency (EPA) has adopted federal standards for radionuclides in drinking water. These standards are applicable to approximately 50 community public water systems in Texas which may be in violation of the standards. These public water systems have or will have an agreement or order with the TCEQ or the EPA. The enforcement action requires a public water system to determine fiscally feasible methods to return to compliance. The public water systems using treatment to remove the excess radionuclides will need to manage and dispose of their treatment residuals containing NORM in a manner that is protective of human health and safety and the environment. "NORM waste" means solid, liquid, or gaseous material or combination of materials, excluding source material, special nuclear material, and by-product material, that, in its natural physical state spontaneously emits radiation; is discarded or unwanted; and is not exempt by Texas Department of State Health Services rule adopted under Texas Health and Safety Code, §401.106.

One option for disposal of nonhazardous DWTR containing NORM could be the use of an injection well authorized to dispose of such waste into a bedded salt formation. In past years, the regulated community has discussed with TCEQ the possibility of submitting a petition for rulemaking to remove the prohibition in §331.14 on construction and operation of Class I salt cavern solid waste disposal wells and associated caverns in

AN ACT

relating to the disposal of demolition waste from abandoned or nuisance buildings in certain areas.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.126 to read as follows:

Sec. 361.126. DISPOSAL OF DEMOLITION WASTE FROM ABANDONED OR NUISANCE BUILDING. (a) This section applies only to a building that has been:

(1) abandoned or found to be a nuisance;

(2) acquired by the county or municipality by means of:

(A) bankruptcy;

(B) tax delinquency; or

(C) condemnation; and

(3) previously owned by a person not financially capable of paying the costs of the disposal of demolition waste at a permitted solid waste disposal facility, including transportation of the waste to the facility.

(b) The commission may issue a permit by rule to authorize the governing body of a county or municipality with a population of 10,000 or less to dispose of demolition waste from a building if the disposal occurs on land that:

(1) the county or municipality owns or controls; and

(2) would qualify for an arid exemption under commission rules.

(c) The commission shall adopt rules under Section 361.024 to control the collection, handling, storage, processing, and disposal of demolition waste under this section to protect public and private property, rights-of-way, groundwater, and any other right that requires protection.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.