

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §330.4, and new §330.26, concerning municipal solid waste management. Section 330.4 is adopted with changes to the proposed text as published in the March 6, 1998, issue of the *Texas Register* (23 TexReg 2253). Section 330.26 is adopted without changes to the proposed text as published and will not be republished.

EXPLANATION OF ADOPTED RULE

These adopted sections are based on legislation passed by the 75th Texas Legislature in 1997. The purpose of these rules is to establish additional general rules for the storage and disposal of litter generated and disposed of on an individual's property. The statutory basis for the rules is found in House Bill (HB) 717, 75th Legislature, which amended the Texas Health and Safety Code, Chapter 365, the Texas Litter Abatement Act, §365.011 and §365.012; Senate Bill (SB) 1782, 75th Legislature, which amended the Texas Health and Safety Code, Chapter 361, the Solid Waste Disposal Act, §361.116; and the Texas Health and Safety Code, Chapter 361, the Solid Waste Disposal Act, §361.011. HB 717 directs the commission to establish rules to regulate temporary storage for future disposal of litter or other solid waste by a person on land owned by the person or the person's agent. These rules establish a permit exemption in new §330.4(v) following the directive from HB 717 that a landowner may dispose of litter or other solid waste on his own land without commission authorization if the litter or other solid waste is generated and disposed of on land the individual owns, and the disposal is not for commercial purposes. Commercial purpose as quoted from the Texas Litter Abatement Act means the purpose of economic gain. Additionally, these rules follow direction from SB 1782 by adding a permit exemption to new §330.4(w) regarding the disposal of animal carcasses for

roadway maintenance. New §330.26 establishes rules regulating the temporary storage for future disposal of litter or other solid waste as required by HB 717. New §330.26 simply requires waste from this source to be stored in the normal manner currently established in existing §330.22 for similar wastes.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory analysis requirement of Texas Government, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because the rule does not meet the full applicability of a “major environmental rule” as defined in the act. The adopted rule will not have an adverse affect in a material way on the economy, environment or public health and safety of any sector of the state. The adopted rule does not exceed any federal standard and is required by state law. The adopted rule does not exceed any expressed requirement of state law. There is no delegation agreement or contract directly applicable to the adopted rule. The rule adoption is made under specific law.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated §2007.043. The following is a summary of that Assessment. The specific purpose of the rules is to regulate activities associated with temporary storage and future disposal of litter and other solid waste by a person on land owned by that person. The rules will establish that agency authorization in the form of a registration or the previously required permit are not required for the disposal of litter or other solid waste generated by an individual and disposed of by that

individual on land owned by that individual. The rules will provide the specific standards for storage of such waste. The rules are necessary to advance the agency's mission of providing adequate public health and safety relative to the management of municipal solid waste. The rules will establish exemptions from authorization standards and will establish storage standards which currently do not exist under Chapter 330. The rules will provide significant clarification regarding the procedures and criteria to be used by the TNRCC and the regulated community in the requirements for the review and approval of permit applications for regulated activities under this chapter. The commission has determined that this rule will not create a burden on private real property. The Texas Health and Safety Code, Chapter 365, the Texas Litter Abatement Act, §365.012, states that a landowner may only dispose of litter or other solid waste on his own land if the litter is or waste is generated on land the individual owns, and the disposal is not for or resulting from a commercial purpose. New §330.26 establishes rules regulating the temporary storage for future disposal of litter or other solid waste as required by HB 717. Additionally, these rules follow direction from SB 1782 by adding a permit exemption regarding the disposal of animal carcasses for roadway maintenance. Through the creation of permit exemptions for this kind of disposal, the commission is not creating a regulatory burden, but is simplifying compliance with an statutory requirement.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking action is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning consistency

with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(4) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, agency rules regarding solid waste management must be consistent with the goals and policies of the CMP to protect the coastal area. The CMP goal applicable to the proposed rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). Applicable policies are construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 United States Code Annotated, §§6901 et seq. Promulgation and enforcement of this rule is consistent with the applicable CMP goals and policies because the proposed permit exemption will have a negligible impact upon the coastal area. In addition, the proposed rule does not violate any applicable provisions of the CMP's state goals and policies. The commission invites public comment on the consistency of the proposed rule. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rule is consistent with CMP goals and policies, in that the permit exemption will have a negligible impact upon the coastal area.

HEARINGS AND COMMENTS

A public hearing was held on March 26, 1998 in Austin, Texas. There were no oral or written comments presented at the hearing. Written comments were received from National Solid Waste Management Association (NSWMA), Galveston County Health District (GCHD), and the Lone Star Chapter of the Sierra Club.

GENERAL PUBLIC COMMENTS

The NSWMA generally supported adoption of the rules as published with some suggested changes.

Both GCHD and NSWMA suggested that language be added to §330.4(v) to clarify that deed recordation and notification are required by existing §330.7 and §330.8 for the disposal of litter or other solid waste.

Clarification to §330.4(v) regarding the existing requirements for deed recordation is appropriate. The commission agrees with the commenters that all property used for the disposal of solid waste should be identified in the deed records so future property owners can identify areas of the property that have been used for disposal of solid waste. Deed recordation is currently required for municipal solid waste landfills in existing §330.7 titled relating to Deed Recordation. Deed recordation provides an important notice to future landowners about solid waste disposal on the property giving an advanced notice of potential future liability, and may provide notice regarding building over waste filled areas. Thus, the commission agrees to add a new §330.4(v)(9) as follows - “the individual complies with the deed recordation and notification requirements in §330.7 of this title (relating to Deed Recordation) and §330.8 of this title (relating to Notification Requirements).”

NSWMA suggested that clarifying language be added to §330.4(w)(3) regarding odor control measures.

The intent of the commission is to protect against nuisance odors in the disposal of animal carcasses. The normal management practice for odor control for land disposal of dead animals is to cover the carcasses with soil. The standard within the adoption language requiring cover within 24 hours is derived from an Environmental Protection Agency standard that requires solid waste to be covered with earthen material daily to control odors (see *Federal Register*, Volume 56, Number 196, October 9, 1991, §258.21, page 51020). The commission agrees to modify the language in §330.4(w)(3) by adding “within 24 hours of collection” to language in §330.4(w)(3) changing the language to the following - “the animal carcasses are covered with at least two feet of soil within 24 hours of collection in accordance with §330.136(b)(2) of this title (relating to Disposal of Special Wastes).”

GCHD states in their written comments that the permit exemptions established in §330.4(v) and (w) will allow individuals to create their own unpermitted landfills and will cause degradation of water resources. GCHD believes that individuals should not be allowed to establish a solid waste disposal site without first providing adequate public health and environmental protective measures.

The commission has made no change in response to this comment. This rulemaking is limited to the specific changes authorized by the 1997 legislative amendments to the Texas Health and Safety Code, Chapter 365, the Texas Litter Abatement Act, §365.011 and §365.012 and to the Texas Health and Safety Code, Chapter 361, the Solid Waste Disposal Act, §361.116. The commission is also concerned with providing adequate public health and environmental protective measures and believes that adequate remedies exist in nuisance abatement law, other state rules, and local

government rules. The commission has never exerted permit requirements over individual disposal of waste, and the smallest recorded landfill permit ever issued was for a small city in west Texas with a population of 114. The legislature has determined that there should be minimal regulation of individuals disposing of their own non-commercial waste on their own property. The commission agrees, recognizing that there is minimal environmental risk posed by such disposal.

Sierra Club has expressed concern in written comment about an individual's disposal of waste. Sierra Club has stated in their comments that there is no public benefit from the legislatively required action. Sierra Club believes that the cost of remediating water potentially affected by disposal of an individual's waste will have significant implications. Sierra Club suggests that §330.4(v)(3) be modified to exclude disposal on an individual's property if the property is less than 100 acres. Sierra Club suggests that the number of animal carcasses to be disposed of be limited by rule.

The commission has made no change in response to these comments. As acknowledged by the commentor, this rulemaking is limited to the specific changes authorized in the 1997 legislative amendments to the Texas Health and Safety Code, Chapter 365, the Texas Litter Abatement Act, §365.011 and §365.012 and to the Texas Health and Safety Code, Chapter 361, the Solid Waste Disposal Act, §361.116. The commission is concerned with providing adequate public health and environmental protective measures and believes that adequate remedies exist in nuisance abatement law and other rules. Establishing limits as suggested by Sierra Club would be outside of the scope of the legislation. TNRCC and its predecessor agencies have never exerted permit

requirements over individual disposal of waste. As noted above, the smallest recorded landfill permit ever issued was for a small city in west Texas with a population of 114.

STATUTORY AUTHORITY

These sections are adopted under the authority of the Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and under House Bill 717, as passed by the 75th Legislature amending the Texas Litter Abatement Act, §365.012, Texas Health and Safety Code, Chapter 365. They are also adopted under the authority of Senate Bill 1782, as passed by the 75th Legislature, which amended the Texas Health and Safety Code, Chapter 361, the Solid Waste Disposal Act, §361.116; and pursuant to the Texas Solid Waste Disposal Act, Texas Health and Safety Code §361.024, which provides the commission with the authority to regulate municipal solid waste and adopt rules as necessary to regulate the operation, management, and control of solid waste under its jurisdiction.

SUBCHAPTER A : GENERAL INFORMATION

§330.4

§330.4. Permit Required.

(a) - (u) (No change.)

(v) A permit, registration, or other authorization is not required for the disposal of litter or other solid waste, generated by an individual, on that individual's own land where:

(1) the litter or waste is generated on land the individual owns;

(2) the litter or waste is not generated as a result of an activity related to a commercial purpose;

(3) the disposal occurs on land the individual owns;

(4) the disposal is not for a commercial purpose;

(5) the waste disposed of is not hazardous waste or industrial waste;

(6) the volume of waste disposed of by the individual does not exceed 2,000 pounds per year;

(7) the waste disposal method complies with §§111.201 - 111.221 of this title (relating to Outdoor Burning);

(8) the waste disposal method does not contribute to a nuisance and does not endanger the public health or the environment. Exceeding 2,000 pounds per individual's residence per year is considered to be a nuisance; and

(9) the individual complies with the deed recordation and notification requirements in §330.7 of this title (relating to Deed Recordation) and §330.8 of this title (relating to Notification Requirements).

(w) A permit or registration is not required for the disposal of animal carcasses from government roadway maintenance where:

(1) either of the following:

(A) the animals were killed on county or municipal roadways and the carcasses are buried on property owned by the entity that is responsible for road maintenance; or

(B) the animals were killed on state highway right-of-way and the carcasses are disposed of by the Texas Department of Transportation by burying the carcasses on state highway right-of-way; and

(2) the waste disposal method does not contribute to a nuisance and does not endanger the public health or the environment; and

(3) the animal carcasses are covered with at least two feet of soil within 24 hours of collection in accordance with §330.136(b)(2) of this title (relating to Disposal of Special Wastes).

SUBCHAPTER B : MUNICIPAL SOLID WASTE STORAGE

§330.26

STATUTORY AUTHORITY

The section is proposed under the authority of the Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and under House Bill 717, as passed by the 75th Legislature amending the Texas Litter Abatement Act, §365.012, Texas Health and Safety Code, Chapter 365. They are also adopted under the authority of Senate Bill 1782, as passed by the 75th Legislature, which amended the Texas Health and Safety Code, Chapter 361, the Solid Waste Disposal Act, §361.116; and pursuant to the Texas Solid Waste Disposal Act, Texas Health and Safety Code §361.024, which provides the commission with the authority to regulate municipal solid waste and adopt rules as necessary to regulate the operation, management, and control of solid waste under its jurisdiction.

§330.26. Storage of Litter and Other Waste

Litter and other waste temporarily stored on an individual's own land for future disposal shall be maintained in a manner that complies with §330.22 of this title (relating to Storage Requirements), §330.23 of this title (relating to Approved Containers), and §§111.201 - 111.221 of this title (relating to Outdoor Burning).