

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to §330.562, Definitions of Terms and Abbreviations; §330.563, Regional and Local Plan Requirements; and §330.566, Procedures for Regional and Local Plan Submission and Approval. Section 330.563 is adopted *with change* to the proposed text as published in the March 24, 2000, issue of the *Texas Register* (25 TexReg 2543). Sections 330.562 and 330.566 are adopted *without changes* and will not be republished.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE RULES

In January 1996, the commission adopted amendments to Chapter 330, Subchapter O, to incorporate requirements mandated by House Bill (HB) 2537, 73rd Legislature, 1993, that all regional and local solid waste management plans include an inventory of existing and closed landfill units. In accordance with HB 2537, the inventory required that the location of the landfill units be provided. In 1999, the 76th Legislature enacted Senate Bill (SB) 1447 which required that the exact boundaries of each former landfill unit or, if the exact boundaries are not known, the best approximation of each unit's boundaries, and a map showing the approximate boundaries of the former landfill unit, if the exact boundaries are not known, be provided. SB 1447 also established requirements for notification of the contents of the inventory to the commission, local governments, and the public. These amendments implement the requirements of SB 1447.

#### SECTION BY SECTION DISCUSSION

Section 330.562 is amended to include a more detailed definition of "closed municipal solid waste landfill unit," in order to specify the types of solid waste disposal sites to be included in the inventories.

Section 330.563 is amended to distinguish between the regional and local solid waste management plan inventory requirements for landfill units for which exact boundaries are known and for landfill units for which exact boundaries are not known. The amendments provide that local plans may substitute the inventory information contained in the regional plan. The amendments also provide that the requirement to include the inventory information in the local plan will not apply until that information has been incorporated into the applicable regional plan and approved by the commissioners. The one change made to the proposed text was to change “extent of the boundaries” to “exact boundaries” in one location in subsection (a)(3)(O) to be consistent with other locations and to reflect statutory terminology.

Section 330.566 is amended to more appropriately name the section and to add procedures for making the closed landfill inventory available for public inspection.

#### REGULATORY IMPACT ASSESSMENT

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in that statute.

“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 amended rules are not anticipated to 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 amendments do not add any additional regulatory requirements not already required by state or federal law. In addition, the amendments are not a “major environmental rule” because they do not meet the applicability requirements of a “major environmental rule.” The amendments do not exceed a standard set by federal law, exceed an express requirement of state law, nor exceed a requirement of a delegation agreement. This rulemaking implements provisions of SB 1447.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rule amendments pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule amendments is to make commission rules conform with the provisions in SB 1447 which clarify the responsibilities of councils of governments and local governments with respect to documenting and reporting the location of closed municipal solid waste landfill units. Previous legislation and implementing rules required the reporting of only the location of a closed landfill to the landowner and the county clerk, but the amendments require that the exact boundaries, or approximate boundaries with a supporting map, of the former landfill unit be reported and recorded in the closed landfill inventory as required by SB 1447.

The rule amendments will substantially advance the specific purpose by incorporating the new requirements specified by SB 1447. Promulgation and enforcement of these amendments will not burden private real property which is the subject of the amendments because the actions that are required by the amendments are directed at regional and local planning agencies and not toward private

real property owners. Therefore, the amendments will not constitute a takings under the Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

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

#### HEARING AND COMMENTERS

A public hearing was not held for this rulemaking. The comment period closed April 24, 2000. The only commenter on the proposal, the Texas Workforce Commission, commented that based on the information provided, it had no basis to expect any significant impact on the overall employment conditions in the State as a result of the proposed rule changes. However, one error was detected in the proposal during staff review of the published proposal, and the error has been corrected in the adoption of the rules.

#### STATUTORY AUTHORITY

The amendments are adopted under the Solid Waste Disposal Act, Texas Health and Safety Code (THSC), §361.011 and §361.24, which authorize the commission to regulate nonhazardous municipal solid waste and to adopt rules consistent with the general intent and purposes of the Act; and the

Comprehensive Municipal Solid Waste Management, Resource Recovery and Conservation Act, THSC, §363.061 and §363.064, which require the commission to adopt rules relating to regional and local solid waste management plans and specify the content of the plans.

The amendments implement THSC, Chapters 361 and 363.

**SUBCHAPTER O: REGIONAL AND LOCAL SOLID WASTE MANAGEMENT PLANNING  
AND FINANCIAL ASSISTANCE GENERAL PROVISIONS**

**§§330.562, 330.563, 330.566**

**§330.562. Definitions of Terms and Abbreviations.**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Advisory council** - The Municipal Solid Waste Management and Resource Recovery Advisory Council.

(2) **City** - An incorporated city or town in the state.

(3) **Closed Municipal Solid Waste Landfill (CMSWLF) Unit** - A discrete area of land or an excavation that has received only municipal solid waste or municipal solid waste combined with other solid wastes, including but not limited to construction/demolition waste, commercial solid waste, nonhazardous sludge, conditionally-exempt small-quantity generator hazardous waste, and industrial solid waste, and that is not a land application unit, surface impoundment, injection well, or waste pile as those terms are defined by 40 Code of Federal Regulations §257.2.

(4) **Commission** - The Texas Natural Resource Conservation Commission (TNRCC).

(5) **Commissioners** - The three-member governing body of the Texas Natural Resource Conservation Commission.

(6) **Executive director** - The executive director of the commission, or any authorized individual designated by the executive director to act in his or her place.

(7) **Governing body** - The city council, commissioners court, board of directors, trustees, or similar body charged by law with governing a public agency.

(8) **Implementation** - Putting the plan into practice by carrying out planned activities, including compliance and enforcement activities, or ensuring such activities are carried out.

(9) **Inactive facility** - A facility which no longer receives solid waste.

(10) **Planning** - Includes collecting information, identifying problems, defining goals and objectives, analyzing alternatives, and determining necessary activities and courses of action needed to achieve identified goals and objectives.

(11) **Planning fund** - The municipal solid waste management planning fund created in the state treasury by the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (V.T.C.A., Health and Safety Code, Chapter 363).

(12) **Planning period** - The period of time within which an adopted solid waste management plan is designed to remain effective.

(13) **Planning region** - A region of the state identified by the governor as an appropriate region for municipal solid waste planning.

(14) **Private operator** - A person, other than a government or governmental subdivision or agency, engaged in some aspect of operating a solid waste management system. The term includes any entity other than a government or governmental subdivision or agency, owned and operated by investment of private capital.

(15) **Property** - Land, structures, interests in land, air rights, water rights, and rights that accompany interests in land, structures, water rights, and air rights and includes easements, rights of way, uses, leases, incorporeal hereditaments, legal and equitable estates, interest, or rights such as terms for years and liens.

(16) **Provide for** - Explain, establish, or set forth steps or courses of actions.

(17) **Public agency** - A city, county, district, or authority created and operating under the Texas Constitution, Article III, §52(b)(1) or (2), or Article XVI, §59, or a combination of two or more of these governmental entities acting under an interlocal agreement and having the authority under state laws to own and operate a solid waste management system.

(18) **Regional or local solid waste management plan** - A plan adopted by a planning region or local government under authority of the Municipal Solid Waste Management, Resource Recovery, and Conservation Act (V.T.C.A., Health and Safety Code, Chapter 363).

(19) **Regional Planning Commission** - A regional planning commission created under Chapter 391, Local Government Code.

(20) **Regional solid waste grants program** - The program established to utilize funds dedicated under the Health and Safety Code, Chapter 361, §361.014 for local and regional solid waste projects and to update and maintain regional solid waste management plans.

(21) **Resolution** - A resolution, order, ordinance, or other action of a governing body.

(22) **Solid waste management** - The systematic control of any or all of the following activities:

(A) generation;

(B) source separation;

(C) collection;

(D) handling;

(E) storage;

(F) transportation;

(G) processing;

(H) treatment;

(I) resource recovery; or

(J) disposal of solid waste.

(23) **Solid waste management system** - Any plant, composting process plant, incinerator, sanitary landfill, transfer station, or other works and equipment acquired, installed, or operated for the purpose of collecting, handling, storing, processing, recovering material or energy, or disposing of solid waste and includes sites for these works and equipment.

(24) **Solid waste resource recovery system** - Any real property, buildings, structures, plants, works, facilities, equipment, pipelines, machinery, vehicles, vessels, rolling stock, licenses, or franchises used or useful in connection with the processing of solid waste to extract, recover, reclaim,

salvage, reduce, concentrate, or convert to energy or useful matter or resources, whatever their form, including electricity, steam, or other forms of energy, and fertilizer, glass, or other forms of material and resources, from such solid waste, and includes any real property, buildings, structures, plants, works, facilities, pipelines, machinery, vehicles, vessels, rolling stock, licenses, or franchises used or useful in:

(A) the transportation, receipt, storage, transfer, and handling of solid waste;

(B) the preparation, separation, or processing of solid waste for reuse;

(C) the handling and transportation of recovered matter, resources, or energy;

and

(D) the handling, transportation, and disposal of any nonrecoverable solid waste residue.

(25) **State solid waste management plan** - The municipal solid waste management plan for Texas.

(26) **Variance** - The granting of relief from the terms or conditions of a plan by the executive director.

**§330.563. Regional and Local Plan Requirements**

(a) Regional plans. A regional plan identifies the problems, goals, objectives, and recommended actions for solid waste management over a long-range period for the entire planning region.

(1) Geographic scope. The geographic scope of the regional planning process shall be the entire planning region designated by the governor. The regional plan shall use the four types of planning units listed in subparagraphs (A) - (D) of this paragraph as appropriate for the information presented. It is not anticipated that the regional plan will present site-specific information:

(A) small geographic areas such as census tracts or city boundaries for the most detailed data collection and manipulation;

(B) planning areas to be used for the assessment of problems and the evaluation of alternatives. These planning areas shall be aggregations of small geographic areas;

(C) county boundaries for the summarization and presentation of key information;

(D) the entire planning region.

(2) Planning periods. The regional planning process shall address solid waste management over a long-range period. Long range is considered to be a period of at least 20 years. The maximum planning period addressed by the plan shall be stated on the plan cover and title page and at other appropriate locations within the body of the plan. The regional plan shall use the four planning periods listed in subparagraphs (A) - (D) of this paragraph as appropriate for the information presented:

(A) current and historical information;

(B) short-range planning period, one to five years, with specific information presented by year;

(C) intermediate planning period, six to 10 years, with information in less detail; or

(D) long-range planning period, 11 to 20 years or longer, with information in the least detail.

(3) Plan content. A regional plan shall be the result of a planning process related to the proper management of solid waste in the planning region. The process shall include identification of problems and collection and evaluation of the data necessary to provide a written public statement of goals and objectives and actions recommended to accomplish those goals and objectives. The regional plan shall include:

- (A) population patterns, commercial and industrial data, and other demographic information necessary to estimate solid waste quantities and characteristics;
- (B) estimates of current and future solid waste amounts by type;
- (C) description of current and planned solid waste management activities in the region;
- (D) description and assessment of the adequacy of existing resource recovery, storage, transportation, treatment, and disposal facilities and practices, and programs for the collection and disposal of household hazardous wastes;
- (E) assessment of current source reduction and waste minimization efforts, including sludge, and efforts to reuse or recycle waste;
- (F) identification of additional opportunities for source reduction and waste minimization, and reuse or recycling of waste;
- (G) recommendations for encouraging and achieving a greater degree of source reduction and waste minimization, and reuse or recycling of waste;
- (H) identification of public and private management agencies and

responsibilities;

(I) identification of solid waste management problems and establishment of priorities for addressing those problems;

(J) planning areas and agencies with common solid waste management problems which could be addressed through joint action;

(K) identification of incentives and barriers for source reduction and waste minimization, and resource recovery, including identification of potential markets;

(L) regional goals and objectives, including waste reduction goals consistent with state goals;

(M) advantages and disadvantages of alternative actions;

(N) the recommended plan of action and associated timetable for achieving regional goals and objectives, including: waste reduction; composting programs for yard wastes and related organic wastes; household hazardous waste collection and disposal programs; public education programs; and the need for new or expanded facilities and practices; and

(O) an inventory of closed municipal solid waste landfill units located within

the planning region. The inventories shall include the exact boundaries of each former landfill unit or, if the exact boundaries are not known, the best approximation of each unit's boundaries. For each landfill unit for which the exact boundaries are not known, the inventories shall include a map showing the approximate boundaries of the former landfill unit. To the maximum extent practicable, such inventories shall list the current owners of the land on which the former landfill units were located and the current use of the land.

(4) Special considerations or restrictions. The regional plan shall not prohibit, in fact or by effect, importation or exportation of waste from one political jurisdiction into another.

(b) Local plans. A local plan addresses specific short and long-range problems and actions related to solid waste management within the jurisdiction of one or more local governments and may be developed regardless of whether a regional plan has been developed which will affect the local planning area.

(1) Geographic scope. The geographic scope of the local planning process shall be the jurisdiction of one or more local governments with common problems or needs, but shall not include the entire planning region. The local plan shall use the three types of planning units listed in subparagraphs (A) - (C) in this paragraph as appropriate for the information presented. In certain cases the local plan may present site-specific information:

(A) small geographic areas such as census tracts or city boundaries for the

most detailed data collection and manipulation. These small areas should be the same as those used in the regional plan;

(B) planning areas to be used for the assessment of problems and the evaluation of alternatives. These planning areas should be aggregations of the small geographic areas;

(C) the entire area encompassed by the local plan.

(2) Planning periods. The local planning process shall address specific short and long-range problems and actions in solid waste management. The maximum planning period addressed by the plan shall be stated on the plan cover and title page and at other appropriate locations within the body of the plan. The local plan should use the planning periods listed in subparagraphs (A) - (D) of this paragraph as appropriate for the information presented:

(A) current and historical information;

(B) short-range planning period, one to five years, with specific information presented by year;

(C) intermediate planning period, six to 10 years, with information in less detail; or

(D) long-range planning period, 11 to 20 years or longer.

(3) Plan content. A local plan shall be the result of a planning process that is related to the proper management of solid waste in the local planning area. The process shall include identification of problems and collection and evaluation of the data necessary to provide a written public statement of goals and objectives and the actions recommended to accomplish those goals and objectives. The local plan shall include:

(A) population and commercial and industrial data from the regional planning process, supplemented with other local demographic information as necessary;

(B) composition, characteristics, and amounts of waste, by type, which affect the local planning area;

(C) description of current and planned solid waste management activities in the local planning area;

(D) description and assessment of the adequacy of existing resource recovery, storage, transportation, treatment, and disposal facilities and practices, including programs for the collection and disposal of household hazardous wastes;

(E) identification of the short and long-range solid waste management problems

within the local planning area;

(F) assessment of current source reduction and waste minimization efforts for solid waste, including sludge, and efforts to reuse or recycle waste;

(G) identification of additional opportunities for source reduction and waste minimization, and reuse or recycling of waste;

(H) recommendations for encouraging and achieving a greater degree of source reduction and waste minimization, and reuse or recycling of waste;

(I) local goals and objectives associated with management problems, including waste reduction goals consistent with state and regional goals;

(J) advantages and disadvantages of alternative actions;

(K) the recommended plan of action and associated timetable for accomplishing the goals and objectives, including: waste reduction; composting programs for yard wastes and related organic wastes; household hazardous waste collection programs; public education programs; and the need for new or expanded facilities or practices; and

(L) an inventory of closed municipal solid waste landfill units located within

the local planning area. The inventories shall include the exact boundaries of each former landfill unit or, if the exact boundaries are not known, the best approximation of each unit's boundaries. For each landfill unit for which the exact boundaries are not known, the inventories shall include a map showing the approximate boundaries of the former landfill unit. To the maximum extent practicable, such inventories shall list the current owners of the land on which the former landfill units were located and the current use of the land. For this requirement, local plans may substitute the applicable parts of the regional inventory required under subsection (a)(3)(O) of this section. This requirement does not apply until a regional inventory is incorporated into the applicable regional plan(s) and approved by the commissioners.

(4) Special considerations or restrictions. The local plan shall not prohibit, in fact or by effect, importation or exportation of waste from one political jurisdiction to another.

**§330.566. Procedures for Regional and Local Plan Submission, Approval, and Distribution.**

(a) Prior to the submission of a plan, the plan shall be adopted by the regional planning commission or local government(s) pursuant to applicable administrative procedures. Local governments shall coordinate with the appropriate regional planning commission and ensure that a local plan is consistent with any regional solid waste management plan in effect for the region encompassing the jurisdiction of the local government, if a regional plan has been approved by the commissioners of the TNRCC.

(b) Within 90 days after a regional or local plan has been submitted, the executive director will tentatively determine if the plan conforms to this subchapter and the state solid waste management plan. The executive director will communicate this determination to the agency which submitted the plan. If the plan is not in conformance, a notice of deficiencies will be provided to the planning agency within 30 days of the tentative disapproval. The executive director has authority to disapprove any plan which has deficiencies. Disapproved plans will not be considered by the commissioners until the executive director determines that deficiencies have been corrected, unless the applicant submits a request for appeal to the commissioners. In order for a plan to be considered under such circumstances, the appeal must be in writing and must be submitted to the commissioners within 30 days following the day the applicant receives notification of tentative plan disapproval by the executive director.

(c) If the executive director tentatively determines a regional or local plan meets the requirements of this subchapter, is in conformance with the state solid waste management plan, and should be approved, the executive director will submit the plan to the commissioners, which, if they concur with the executive director's approval, shall approve a plan by adopting a rule in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001. Commissioners' action on the plan will normally occur within 60 days of the tentative decision by the executive director to approve the plan, but the approval will not be effective until the plan has completed the rulemaking process specified by the Administrative Procedure Act, i.e., publication of the proposed action in the Texas Register, a 30-day public comment period, and publication of the final rule action in the Texas Register. If approved, the executive director will notify the planning agency of the commissioners' approval. In the event the plan is not approved, the commissioners will state the plan's deficiencies and

the executive director will immediately notify the planning agency of the commissioners' decision and the plan's deficiencies. The plan may be resubmitted for approval if the executive director determines that deficiencies have been corrected.

(d) If a regional or local solid waste management plan is adopted by rule of the commissioners, public and private solid waste management activities and state regulatory activities shall conform to the adopted regional or local solid waste management plan. The plan shall only remain in effect during the planning period defined in the plan. Under procedures and criteria of subsections (g) and (h) of this section, the executive director may grant a variance from an adopted regional or local solid waste management plan.

(e) If a portion of a regional or local plan is determined by the executive director to no longer be in compliance with the state solid waste management plan or these sections, the executive director may request that the regional body or local government revise the plan. If such a revision is not submitted to the TNRCC within 180 days, the executive director may ask the commissioners to withdraw their approval of that portion of the plan.

(f) A planning commission or local government may submit revisions or updates to an approved plan that reflect new information or changed conditions. Updates to an approved plan to provide for changes to data and information contained in the plan, which do not substantially change the scope or content of the goals and recommendations of the plan, may be incorporated into an approved plan upon approval by the executive director without further adoption procedures being required.

Major revisions and amendments to an approved plan that substantially change the scope or content of the goals and recommendations of the plan shall be considered by the same procedures as original plan submission and approval.

(g) Upon application, the executive director may grant a variance from an adopted regional or local solid waste management plan when:

(1) application of the plan creates unnecessary hardship;

(2) equally safe, effective methods could be used;

(3) practical difficulties are encountered in meeting the requirements of a plan; or

(4) deviation or exception would not affect substantial compliance with the plan and not threaten health or safety.

(h) If the executive director intends to grant a variance from the requirements of a plan, the executive director will offer the opportunity for a public hearing on the matter prior to the final decision. The hearing, if requested, will be advertised and conducted within the area affected by the plan.

(i) Upon approval of a regional plan by the commissioners, the regional planning commission

shall provide a copy of the adopted plan, including the inventory of closed municipal solid waste landfill units, to the chief planning official of each municipality and county within the planning region. The regional planning commission and the chief planning officials shall make the adopted regional plan available for public inspection.