

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §328.71, Closure Cost Estimate for Financial Assurance. The commission proposes these revisions to Chapter 328, Waste Minimization and Recycling; Subchapter F, Closure Cost Estimate for Financial Assurance, in order to complete cross-references regarding financial assurance requirements for scrap tire sites.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The cross-references in Chapter 328 to §37.3001 and §37.3011 need to be replaced by a reference to Chapter 37, Subchapter M, Financial Assurance Requirements for Scrap Tire Sites.

On February 24, 2000, the Chapter 37 financial assurance rule consolidation package was adopted. This package attempted to correct a cross-reference concerning financial assurance requirements for waste tire sites in Chapter 330. However, the Chapter 330 waste tire subchapters were being repealed and placed into Chapter 328 during the time that Chapter 37 was processed. Changes to Chapter 328 were not made because the Chapter 37 project team did not conceptualize opening Chapter 328. The cross-reference correction is needed to direct entities that manage used or scrap tires to the location of the financial assurance requirements.

SECTION BY SECTION DISCUSSION

The rule will amend cross-references in §328.71(g) by deleting the specific previous cross-references to §37.3001 and §37.3011 and adding the appropriate cross-reference to Chapter 37, Subchapter M, Financial Assurance Requirements for Scrap Tire Sites, to specify all sections. These sections include:

§37.3001, Applicability; §37.3003, Definitions; §37.3011, Financial Assurance Requirements; §37.3021, Financial Assurance Mechanisms; and §37.3031, Submission of Documents.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed amendment is in effect there will be no significant fiscal impacts for units of state and local government as a result of administration or enforcement of the proposed amendment. The proposed amendment does not impose any new requirements on owners and operators of scrap tire sites and is administrative in nature by updating references to financial assurance requirements within the scrap tire site rules. There are no known units of state or local government that are affected by the proposed amendment because no units of state or local government are owners or operators of scrap tire sites.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendment will be that owners and operators of scrap tire sites will know where to find updated information and rules concerning financial assurance requirements.

The proposed amendment is intended to provide owners and operators of scrap tire sites with the updated location for rules covering financial assurance for scrap tire sites. Financial assurance is a key component of the scrap tire site registration process. During registration, an owner or operator seeking

approval to operate a scrap tire site must prepare a written estimate detailing the total costs for closing the site(s). Site closure consists of cleaning and securing the site, and dismantling the tire shredding equipment. Prior to the approval of the application, the owner or operator must provide financial assurance to fund the closure of the facility if necessary.

The proposed amendment does not add additional regulatory requirements; thus, the commission estimates there will be no additional costs to individuals and businesses as a result of implementing the proposed amendment. There are approximately 15 scrap tire storage sites in Texas that are owned by small or micro-businesses.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse economic effects are anticipated to any small or micro-business as a result of the proposed amendment. This amendment to the commission's rules are administrative in nature and will have no fiscal impact on small or micro-businesses.

The proposed amendment does not add additional regulatory requirements; thus, the commission estimates there will be no additional costs to the approximately 15 scrap tire sites in Texas that are owned and operated by small or micro-businesses. The proposed amendment updates references to the location of rules relating to financial assurance for scrap tire sites. During registration, an owner or operator seeking approval to operate a scrap tire storage site must prepare a written estimate detailing the total costs for closing the site(s). Site closure consists of cleaning and securing the site, and dismantling the tire shredding equipment. Prior to the approval of the application, the owner or

operator must provide financial assurance to fund the closure of the facility if necessary.

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 rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the Texas Government Code. Although the intent of the proposed amendment is to protect the environment or reduce risks to human health from environmental exposure, the rulemaking will not have an adverse material impact because the proposed amendment corrects a cross-reference and does not change regulatory requirements, and therefore does not meet the definition of a “major environmental rule.” Furthermore, the rulemaking does not meet any of the four applicability requirements listed in §2001.0225(a). The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rulemaking and performed a preliminary assessment of whether the proposed amendment constitutes a takings under Texas Government Code, Chapter 2007. The following is a summary of that evaluation and preliminary assessment. The specific purpose of the proposed amendment is to clarify the location of rules relating to financial assurance for scrap tire facilities. Entities that manage used scrap tires will benefit from knowing the appropriate location for information relating to the financial assurance requirements.

Adoption and enforcement of the proposed amendment would neither be a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which otherwise exist in the absence of the regulations.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the rule is 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 it affect any action/authorization identified in Coastal Coordination Act Implementation rules, 31 TAC §505.11. Therefore, the proposed amendment is not subject to the CMP.

SUBMITTAL OF COMMENTS

Comments may be mailed to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 1999-083-328-WS. Comments must be received by 5:00 p.m., December 18, 2000. For further information, please contact David T. Williams, Policy and Regulations Division, (512) 239-0339.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the

commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of this state. The amendment is also proposed under the Texas Health and Safety Code (THSC), §361.011, which provides the commission with the authority to adopt rules and to establish standards of operation for the management of solid waste; and THSC, §361.085, which provides the commission with the authority to require financial demonstrations for permitted solid waste and hazardous waste facilities. In addition, THSC, §361.112, provides the commission with the authority to adopt by rule application forms and procedures for the registration and permitting process (of which financial assurance is a part) for the storage, transportation, and disposal of used or scrap tires. The commission may not register or issue a permit to a facility required to provide evidence of financial responsibility unless the facility has complied with this financial assurance requirement.

The proposed amendment implements THSC, §361.011, Commissions Jurisdiction: Municipal Solid Waste; and §361.112, Storage, Transportation, and Disposal of Used or Scrap Tires.

CHAPTER 328: WASTE MINIMIZATION AND RECYCLING

SUBCHAPTER F: MANAGEMENT OF USED OR SCRAP TIRES

§328.71

§328.71. Closure Cost Estimate for Financial Assurance.

(a) - (f) (No change.)

(g) Financial assurance required under this section shall be provided in accordance with Chapter 37, Subchapter M of this title (relating to Financial Assurance Requirements for Scrap Tire Sites) [§37.3001 of this title (relating to Applicability) and §37.3011 of this title (relating to Financial Assurance Requirements for Scrap Tire Sites)].

(h) - (i) (No change.)