

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
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