

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: June 13, 2014

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: Brent Wade, Deputy Director
Office of Waste

Docket No.: 2013-1390-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 330, Municipal Solid Waste
Chapter 339, Groundwater Protection Recommendation Letters and Fees
HBs 7 & 2694 and SB 819: MSW Tipping Fees & Exemptions, RRC Transfer,
and PBR for Disposal of Demolition Waste Rule
Rule Project No. 2013-050-330-WS

Background and reason(s) for the rulemaking:

The adopted rulemaking is part of the implementation of House Bill (HB) 7 and Senate Bill (SB) 819, both from the 83rd Legislature (2013) and HB 2694, Article 2, from the 82nd Legislature (2011).

HB 7, authored by Representative Drew Darby, reduced the municipal solid waste disposal fees paid to the commission, revised the allocation of the disposal fee revenue, and revised the disposal fee exemption and credit for material diverted and processed into compost or mulch. Specifically, HB 7 amended the Texas Health and Safety Code (THSC), §361.013(a) and (f) and §361.014(a) and (b). The municipal solid waste disposal fee, commonly known as the tipping fee, was reduced by 25%. Secondly, the 50%/50% allocation percentage of the tipping fee revenue between Accounts 5000 and 0549 was revised. The Waste Management Account 0549 was allocated 66.7% of the tipping fee revenue and the Solid Waste Disposal Fee Account 5000 was allocated 33.3%. Lastly, the tipping fee exemption and credit was revised to allow the diversion of a wider variety of source-separated material and to allow mulching, in addition to composting, as a diversion process.

SB 819, sponsored by Senator Robert Duncan, increased the population limit, from 10,000 to 12,000 people, for counties or municipalities seeking authorization under a permit by rule (PBR) to dispose of demolition waste from abandoned or nuisance buildings. Specifically, SB 819 amended THSC, §361.126.

Article 2 of HB 2694, authored by Representative Wayne Smith, transferred from this commission to the Railroad Commission of Texas (RRC) duties relating to the protection of groundwater resources from oil and gas associated activities. Specifically, HB 2694, Article 2 amended the Texas Natural Resource Code, §91.011 and added §§91.0115, 91.020, and 91.1015 and amended the Texas Water Code, §27.033. The law transferred from the commission to the RRC, effective September 1, 2011, those duties pertaining to the responsibility of preparing groundwater protection advisory/recommendation letters. The RRC has adopted rules pertaining to the issuance of groundwater protection letters on May

Re: Docket No. 2013-1390-RUL

24, 2013, which became effective on January 1, 2014. The commission can repeal 30 TAC Chapter 339 pertaining to the issuance of groundwater protection letters.

Scope of the rulemaking:

The adopted rulemaking amends 30 TAC §§330.7, 330.671, 330.673, and 330.675 to reflect the changes to the THSC. Chapter 339 is no longer necessary because the Surface Casing Program and responsibilities have been transferred to the RRC and the RRC has adopted Surface Casing rules.

A.) Summary of what the rulemaking will do:

Revision to §330.7 increases the population limit, from 10,000 to 12,000 people, for counties or municipalities seeking a PBR to dispose of nuisance or abandoned buildings.

Revisions to §330.671 and §330.675 allows mulching, in addition to composting, as a process for diverted materials and allows a wider variety of material to meet the source-separated exemption.

Revision to §330.673 reduces the municipal solid waste disposal fee by 25%. For waste disposed of at a landfill, the fee is reduced as follows:

- \$1.25 to \$0.94 per ton,
- \$0.40 to \$0.30 per compacted cubic yard, and
- \$0.25 to \$0.19 per uncompacted cubic yard.

For waste disposed of by other means (incineration, land application, etc.), the fee is reduced as follows:

- \$0.62 and one-half cent to \$0.47 per ton,
- \$0.20 to \$0.15 per compacted cubic yard, and
- \$0.12 and one-half cent to \$0.09 and one-half cent per uncompacted cubic yard.

The repeal of §§339.1 – 339.3 will eliminate rules that are no longer applicable to the commission since responsibility for the Surface Casing Program has been transferred to the RRC and the RRC has adopted Surface Casing rules.

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

The state statutes, revised by HB 7, HB 2694 Article 2, and SB 819, necessitate the revision to the commission rules.

C.) Additional staff recommendations that are not required by federal rule or state statute:

None.

Statutory authority:

This rulemaking implements HB 7 and SB 819 from the 83rd Legislature, 2013 and the remaining portion of TCEQ's Sunset Bill, HB 2694 from the 82nd Legislature, 2011.

Commissioners

Page 3

June 13, 2014

Re: Docket No. 2013-1390-RUL

TWC, §5.102 – General Powers

TWC, §5.103 – Rules

THSC, §361.011 – Commission’s Jurisdiction: Municipal Solid Waste

THSC, §361.013 – Solid Waste Disposal and Transportation Fees

THSC, §361.014 – Use of Solid Waste Fee Revenue

THSC, §361.024 – Rules and Standards

THSC, §361.061 – Permits: Solid Waste Facility

THSC, §361.126 – Disposal of Demolition Waste from Abandoned or Nuisance Building

Effect on the:

A.) Regulated community:

Effective June 14, 2013, the regulated community saw a 25% reduction in the solid waste disposal fees paid to the TCEQ.

The rulemaking will allow the regulated community to receive an exemption from the tipping fee on a wider range of source-separated material. The rulemaking will also allow mulching, in addition to composting, as a process for diverted material.

With the increase in the population limit from 10,000 to 12,000 people, approximately 12 additional counties or municipalities may dispose of nuisance or abandoned buildings by a PBR. This value was based on 2010 census data.

B.) Public:

None.

C.) Agency programs:

None.

Stakeholder meetings:

A stakeholder meeting was not held.

Public comment:

A public hearing was held on February 18, 2014, in Austin. No comments were provided during the hearing. Two comments were received from the City of Houston and the Lone Star Chapter of the Solid Waste Association of North America (TXSWANA). Their comments opposed the 25% reduction in the solid waste disposal fee and the reduction in the allocation percentage to the Regional Solid Waste Grants Program (Account 5000). No changes to the rules were made because the commission is required to implement the statute.

Significant changes from proposal:

No changes to the proposed rules were made.

Potential controversial concerns and legislative interest:

None.

Commissioners

Page 4

June 13, 2014

Re: Docket No. 2013-1390-RUL

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 this rulemaking does not go forward, then commission rules will not reference the current version of THSC, §§361.013, 361.014, 361.061, and 361.126. The commission rules would not reference the 25% reduction in the solid waste disposal fee. The commission rules would continue to include requirements for the Surface Casing program that is no longer under the commission's jurisdiction.

Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** January 31, 2014

Anticipated *Texas Register* adoption publication date: July 25, 2014

Anticipated effective date: July 31, 2014

Six-month *Texas Register* filing deadline: July 31, 2014

Agency contacts:

Charlyne Fritz, Rule Project Manager, Waste Permits Division, (512) 239-2331

Steve Shepherd, Staff Attorney, Environmental Law Division, (512) 239-0464

Bruce McAnally, Texas Register Coordinator, General Law Division, (512) 239-2141

Attachments

House Bill 7

Senate Bill 819

House Bill 2694, Article 2

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Tucker Royall
Pattie Burnett
Dennise Braeutigam
Office of General Counsel
Charlyne Fritz
Bruce McAnnally