

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: January 20, 2012

Thru: Bridget Bohac, Chief Clerk
Mark R. Vickery, P.G., Executive Director

From: Brent Wade, Deputy Director
Office of Waste

Docket No.: 2011-1266-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 330, Municipal Solid Waste
SB 1258: Disposal of Demolition Waste
Rule Project No. 2011-048-330-WS

Background and reason(s) 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 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 proposed rule creates a new permit by rule 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 proposed rule will establish a permit by rule for small west Texas communities to dispose of demolition waste from nuisance and abandoned buildings. The proposed rule also describes the conditions that must be met to qualify for the permit by rule.

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

The state statute indicates that the permit by rule may be utilized by counties or municipalities with populations of less than 10,000 people. 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 facilities are subject to the federal standards in 40 Code of Federal Regulations (CFR) Part

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257, there are no federal standards specifically for 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 proposed 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 permit by rule, 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 roles.

C.) Agency programs:

At existing staffing levels, the Municipal Solid Waste Permits Section will be reviewing and processing forms documenting the utilization of the permit by rule. Small Business and Local Government Assistance Program staff are likely to field inquiries regarding the permit by rule. Enforcement and Regional Office staff may be charged with additional investigation should these facilities result in public complaint.

Stakeholder meetings:

No stakeholder meetings are planned.

Potential controversial concerns and legislative interest:

Owners of landfills currently authorized may perceive facilities authorized under the permit by rule as reducing their profits. Municipalities that have contacted the commission to date have indicated that they do not have funding to transport and dispose of these wastes at existing landfills. It is therefore believed that this is not lost income to existing landfills because, without this opportunity, the affected communities would not dispose of these materials.

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Will 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 proposal rulemaking schedule:

Anticipated proposal date: February 8, 2012

Anticipated *Texas Register* publication date: February 24, 2012

Public hearing date (if any): March 22, 2012

Public comment period: February 24 - March 26, 2012

Anticipated adoption date: July 11, 2012

Agency contacts:

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Attachments

Senate Bill 1258

cc: Chief Clerk, 2 copies
Executive Director's Office
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