

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §335.508.

Background and Summary of the Factual Basis for the Proposed Rule

House Bill (HB) 2244, passed by the 84th Texas Legislature, 2015, amends the Texas Health and Safety Code (THSC), Chapter 361 by adding new §361.0905 (Regulation of Medical Waste) requiring the commission to adopt regulations under a new chapter specific for the handling, transportation, storage, and disposal of medical waste. The proposed rulemaking would move the rules related to medical waste from 30 TAC Chapter 330 (Municipal Solid Waste) to a new proposed 30 TAC Chapter 326 (Medical Waste Management). HB 2244 was effective immediately on June 10, 2015, upon the Governor signing it into law. The legislation also states that the commission must adopt any rules required to implement HB 2244 by June 1, 2016.

Section Discussion

Subchapter R: Waste Classification

§335.508, Classification of Specific Industrial Solid Wastes

Section 335.508(4), concerning classification of medical waste as type 2 waste, is proposed to be amended to update to reference to the medical waste provisions from Chapter 330, Subchapter Y to Chapter 326.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer Division, has determined that for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government.

The proposed rule updates a reference to a rule which was relocated to implement HB 2244. HB 2244 directs TCEQ to adopt a new chapter to consolidate all relevant medical waste rules currently in the Texas Administrative Code and to clearly separate these rules from those applicable to landfills. The corresponding rulemaking would move the current rules related to medical waste from Chapter 330, to the proposed new Chapter 326. The corrected cross-reference is minor and not expected to significantly increase reporting or compliance requirements for regulated entities.

There will be costs to the agency to implement the proposed rule; however, the costs can be reasonably absorbed using current resources. Because fees and essentially all other reporting requirements will remain unchanged, the proposed rule will not have significant fiscal implications for any state or local governments that handle, store, dispose, or transport medical waste. The proposed rulemaking will affect medical waste transporters, treatment and transfer facilities, health care related facilities (hospitals, clinics, nursing homes) and mobile treatment units.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the administration and enforcement of the proposed rule will be enhanced compliance due to more clear and concise rules for the management of medical waste.

No significant fiscal implications are anticipated for businesses or individuals as a result of the administration of the proposed rule. The proposed amendment would update a cross-reference to reflect that the current rules related to medical waste are being moved from Chapter 330, to the proposed new Chapter 326. This change is minor and not expected to significantly increase reporting or compliance requirements for regulated entities. The proposed rulemaking will affect medical waste transporters, treatment and transfer facilities, health care-related facilities (hospitals, clinics, nursing homes) and mobile treatment units.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. A small business is expected to experience the same fiscal impact as that experienced by individuals or large business under the proposed rule. It is not known how many small or micro-businesses may be affected by the proposed rule. But for those that are, they can expect that the proposed rule will not change fees or most all other reporting requirements. The proposed rule updates a cross-reference to the

location of the medical waste rules. This change is not expected to result in significant fiscal implications.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule is necessary in order to comply with state law and does not adversely affect small or micro-businesses in a material way for the first five years that the proposed rule is in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

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 the rule does not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "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 proposed rulemaking is intended to implement HB 2244 by updating a cross-reference to the medical waste rules which are being relocated into a new chapter in a corresponding rulemaking. The updated cross-reference is not expected to have a significant impact on the industry or the public.

Furthermore, the proposal does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rulemaking is only updating a cross-reference and does not meet any of these applicability requirements.

Written comments on the Draft Regulatory Impact Analysis Determination may be

submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The specific intent of the proposed amendment is to implement HB 2244 by updating a cross-reference to the medical waste rules which are being moved to a new chapter in a corresponding rulemaking. The updated cross-reference is not expected to have a significant impact on the industry or the public.

The amendment does not impose a burden on a recognized real property interest and therefore does not constitute a taking. The promulgation of the proposed rulemaking is neither a statutory nor a constitutional taking of private real property by the commission. Specifically, the proposed rulemaking does not affect a landowner's rights in a recognized private real property interest because this rulemaking neither: burdens (constitutionally) or restricts or limits the owner's right to the property that would otherwise exist in the absence of this rulemaking; nor would it reduce its value by 25% or more beyond that value which would exist in the absence of the proposed rule. Therefore, the proposed rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor would it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on January 25, 2016, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2015-019-326-WS. The comment period closes on February 8, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Mario Perez, Municipal Solid Waste Permits Division, (512) 239-6681.

SUBCHAPTER R: WASTE CLASSIFICATION

§335.508

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and Texas Health and Safety Code (THSC), §§361.011, 361.017 and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act.

The proposed amendment implements THSC, §361.0905, which requires the commission to adopt rules in a new chapter to regulate medical waste.

§335.508. Classification of Specific Industrial Solid Wastes.

The following nonhazardous industrial solid wastes shall be classified no less stringently than according to the provisions of this section.

(1) Industrial solid waste containing asbestos material identified as regulated asbestos containing material (RACM), as defined in 40 Code of Federal Regulations (CFR) Part 61, shall be classified as a Class 1 waste.

(2) Empty containers that are a solid waste as defined in §335.1 of this title (relating to Definitions) shall be subject to the following criteria:

(A) A container which has held a Hazardous Substance as defined in 40 CFR Part 302, a Hazardous waste, a Class 1 waste, or a material which would be classified as a Hazardous or Class 1 waste if disposed of, and is empty per §335.41(f)(2) of this title (relating to Purpose, Scope and Applicability concerning empty containers):

(i) shall be classified as a Class 1 waste;

(ii) may be classified as a Class 2 waste if the container has a capacity of five gallons or less; or

(iii) may be classified as a Class 2 waste if the container has a capacity greater than five gallons and:

(I) the residue has been completely removed either by triple rinsing with a solvent capable of removing the waste, by hydroblasting, or by other methods which remove the residue; and

(II) the container has been crushed, punctured, or subjected to other mechanical treatment which renders the container unusable; or

(iv) may be classified as a Class 2 waste if the container is to be sent for recycling and:

(I) the residue has been completely removed either by triple rinsing with a solvent capable of removing the waste, by hydroblasting, or by other methods which remove the residue; and

(II) the container is not regulated under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) 40 CFR Part 165; and

(III) the generator maintains documentation in accordance with §335.513 of this title (relating to Documentation Required) that demonstrates the container is being recycled; and

(IV) the recycling activity involves shredding, dismantling, scrapping, melting, or other method that renders the container unusable.

(B) A container which has held a Class 2 waste shall be classified as a Class 2 waste.

(C) Aerosol cans that have been depleted of their contents, such that the inner pressure of the can equals atmospheric pressure and minimal residues remain in the can, may be classified as a Class 2 wastes.

(3) Plant trash refers only to paper, cardboard, food wastes, and general plant trash. These wastes shall be subject to the following classification criteria.

(A) The form code 999 ("PLANT TRASH") refers only to Class 2 waste originating in the facility offices or plant production area that is composed of paper, cardboard, linings, wrappings, paper and/or wooden packaging materials, food wastes, cafeteria waste, glass, aluminum foil, aluminum cans, aluminum scrap, stainless steel, steel, iron scrap, plastics, styrofoam, rope, twine, uncontaminated rubber, uncontaminated wooden materials, equipment belts, wirings, uncontaminated cloth, metal bindings, empty containers with a holding capacity of five gallons or less, uncontaminated floor sweepings, and/or food packaging, that are produced as a result of plant production,

manufacturing, laboratory, general office, cafeteria, or food services operations. Also included in plant trash are personal cosmetics generated by facility personnel, excluding those cosmetics generated as a result of manufacturing or plant production operations. Plant refuse shall not include oils, lubricants of any type, oil filters, contaminated soils, sludges, wastewaters, bulk liquids of any type, or Special Wastes as defined by §330.3 [§330.2] of this title (relating to Definitions).

(B) The form code 902 ("SUPPLEMENTAL PLANT PRODUCTION REFUSE") only applies to Class 2 Waste from production, manufacturing, or laboratory operations. The total amount of the supplemental plant production refuse (form code 902) shall not exceed 20% of the annual average of the total plant refuse (form code 999) volume or weight, whichever is less. Individual wastes which have been designated supplemental plant production refuse may be designated by the generator at a later time as a separate waste in order to maintain the supplemental plant production refuse at or below 20% of the appropriate plant refuse amount. For any waste stream included with, removed from, or added to the supplemental plant refuse designation (form code 902), the generator must provide the notification information required pursuant to this subchapter.

(4) Medical wastes which are subject to the provisions of Chapter 326 [330, Subchapter Y] of this title (relating to Medical Waste Management) shall be designated as Class 2 wastes.

(5) Media contaminated by a material containing greater than or equal to 50 parts per million total polychlorinated biphenyls (PCBs) and wastes containing greater than or equal to 50 ppm PCBs shall be classified as Class 1.

(6) Wastes which are petroleum substances or contain contamination from petroleum substances, as defined in §335.1 of this title shall be classified as a Class 1 waste until a generator demonstrates that the waste's total petroleum hydrocarbon concentration (TPH) is less than or equal to 1,500 parts per million (ppm). Where hydrocarbons cannot be differentiated into specific petroleum substances, then such wastes with a TPH concentration of greater than 1,500 ppm shall be classified as a Class 1 waste. Wastes resulting from the cleanup of leaking underground storage tanks (USTs) which are regulated under Chapter 334, Subchapter K of this title (relating to Storage, Treatment and Reuse Procedures for Petroleum Substance Contaminated Soil [Waste]) are not subject to classification under this subchapter.

(7) Wastes generated by the mechanical shredding of automobiles, appliances, or other items of scrap, used, or obsolete metals shall be handled according

to the provisions set forth in Texas Health and Safety Code, §361.019, until the commission develops specific standards for the classification of this waste and assures adequate disposal capacity.

(8) If a nonhazardous industrial solid waste is generated as a result of commercial production of a "new chemical substance" as defined by the federal Toxic Substances Control Act, 15 United States Code §2602(9), the generator shall notify the executive director prior to the processing or disposal of the waste and shall submit documentation requested under §335.513(b) and (c) of this title for review. The waste shall be managed as a Class 1 waste, unless the generator can provide appropriate analytical data and/or process knowledge which demonstrates that the waste is Class 2 or Class 3, and the executive director concurs. If the generator has not received concurrence from the executive director within 120 days from the date of the request for review, the generator may manage the waste according to the requested classification, but not prior to giving ten working days written notice to the executive director.

(9) All nonhazardous industrial solid waste generated outside the state of Texas and transported into or through Texas for processing, storage, or disposal shall be classified as:

(A) Class 1; or

(B) may be classified as a Class 2 or Class 3 waste if:

(i) the material satisfies the Class 2 or Class 3 criteria as defined in §§335.506, 335.507 or 335.508 of this title (relating to Class 2 Waste Determination; Class 3 Waste Determination; Classification of Specific Industrial Solid Wastes); and

(ii) a request for Class 2 or Class 3 waste determination is submitted to the executive director accompanied by all supporting documentation as required by §335.513 of this title. Waste generated out-of-state may be assigned a Class 2 or Class 3 classification only after approval by the executive director.

(10) Wastes which are hazardous solely because they exhibit a hazardous characteristic, which are not considered hazardous debris as defined in 40 CFR §268.2(g), which are subsequently stabilized and no longer exhibit a hazardous characteristic and which meet the land disposal restrictions as defined in 40 CFR Part 268 may be classified according to the Class 1 or Class 2 classification criteria as defined in §§335.505, 335.506, and 335.508 of this title.