

Chairman Kathleen White
Commissioner Ralph Marquez
Commissioner Larry Soward

OLD BUSINESS AGENDA

Wednesday, March 1, 2006

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

9:30 A.M.
12100 Park 35 Circle
Room 201S, Bldg. E

Continued from the February 1, 2006 agenda. The Commissioners may recess for a lunch break and may not meet in Open Session from 12:00 pm to 1:00 pm. Unfinished items will be continued to the afternoon.

- Item 1. **Docket No. 2005-1083-RUL.** Consideration of the adoption of amended, new, and repealed sections of **30 TAC Chapter 330**, Municipal Solid Waste.

The adoption would: 1) provide an overall topic reorganization; 2) streamline low-risk waste activities to lower agency authorizations, including allowing permits by rule and registrations by rule for certain low-impact waste management activities; 3) decrease regulatory requirements for small rural transfer stations; 4) increase ease or desirability for counties to license certain municipal solid waste (MSW) activities, within statutory constraints (see Texas Health and Safety Code, Sections 361.154 - 361.160); 5) streamline and clarify MSW transporter requirements; 6) allow a permit by rule for persons that compact or transport waste in enclosed containers or enclosed vehicles to Type IV landfills; 7) decrease regulatory requirements for medical waste management between hospitals and associated clinics; 8) revise the requirements for detecting and measuring landfill gas to establish more enforceable language; 9) establish basic levels of quality assurance and quality control reporting to be included in sampling and laboratory analysis reports submitted to the TCEQ; 10) harmonize with the commercial industrial nonhazardous waste landfill rules; 11) clarify construction activities that are allowed prior to authorization; 12) remove the ban on trench burners at MSW facilities and establish requirements for trench burners (Air Curtain Incinerators) at MSW facilities, consistent with the TCEQ permit by rule allowed by 30 TAC Section 106.496; 13) add appropriate professional geoscientist language; 14) revise the MSW permit and registration application format to ease the council of governments application reviews of MSW facility siting and compatibility with surrounding land use; 15) revise the annual/quarterly maintenance fee for transporters with a special collection route permit for enclosed containers or enclosed vehicles transported to Type IV landfills so that municipal and other transporters are required to pay the same fee; 16) add new buffer zone requirements for landfills; 17) add new groundwater monitoring well spacing requirements for landfills; 18) harmonize the MSW landfill operational requirements for claiming the standard air permit under 30 TAC Section 116.621; 19) establish an MSW standard air permit for landfills and transfer stations; 20) incorporate

changes from House Bills 1053 and 1609, 79th Legislature, Regular Session, 2005; 21) improve readability, correct citations and cross-references, delete obsolete requirements, make other changes as specified in the preamble, and update the agency name; 22) remove the permit exemption for Type V processing facilities that recycle 10% of material for beneficial use; and 23) add a new standard permit and registration condition that requires the executive director to review the permit or registration every five years. The proposed rules were published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5545). (Richard Carmichael, Todd Galiga) (Rule Project No. 2004-031-330-WS)

- (1) Adopt the 9/9/05 version of rule 30 TAC § 330.9(g) regarding the Type V 10% recycling exemption from permitting. This would retain the exemption contained in current rules, but would add new recordkeeping and reporting requirements. KW/LS; all agree.
- (2) Delete proposed 30 TAC § 330.73(g) regarding the Executive Director's 5-year review. Include issues related to the 5-year review in a future rulemaking. LS/RM; all agree.
- (3) Delete all references to bioreactors in proposed 30 TAC §§ 330.3(16), 330.63(d)(6), and 330.991(a)(6). Include issues related to bioreactors in a future rulemaking. LS/KW; all agree.
- (4) Delete references to "alternative liner" and/or "equivalent liner" in the first sentence of proposed 30 TAC § 330.177. KW/LS; all agree.
- (5) Revise proposed 30 TAC § 330.63(c)(2)(B) from "FEMA maps are not conclusive of floodplain locations" to "FEMA maps are prima facie evidence of floodplain locations." LS/RM; all agree.
- (6) Adopt the language proposed at agenda by Harris County Public Health & Environmental Services to 30 TAC §§ 330.11, 330.127, 330.131, 330.403, 330.407, 330.409, 330.961, 330.1211, and 330.1213 regarding notification to a local pollution agency with jurisdiction when the information has been requested by that agency. LS/KW; all agree.
- (7) Modify the language in 30 TAC § 330.543 to indicate that for vertical expansions, the new 125-foot buffer zone is measured from the outermost edge of the newly permitted solid waste disposal airspace. In addition, modify 30 TAC § 330.543 to exclude Type IV facilities from the new 125-foot buffer zone requirements. KW/LS; all agree.
- (8) Modify proposed 30 TAC § 330.401(b) by adding language excluding Type IV facilities from the applicability provisions for groundwater sampling & analysis plans except as provided in 30 TAC § 330.417. LS/KW; all agree.
- (9) Add a sunset date of January 1, 2009 to the analytical quality assurance and quality control provisions in 30 TAC Chapter 330, Subchapter F. KW/LS; all agree.
- (10) Revise 30 TAC § 330.403(a)(2) to indicate that the presumptive norm is 600 feet for groundwater monitoring well spacing, but that the distance can be modified either upward or downward if the Applicant submits site-specific technical demonstrations justifying a different spacing. Existing landfills with well spacing that is currently greater than 600 feet apart must demonstrate the appropriateness of that well spacing within the timeframe specified in the rules. KW/LS; all agree.
- (11) Modify the applicability provisions in 30 TAC § 330.1(a)(2) and (a)(5) to provide that owners and operators with new permit applications or major amendments to increase solid waste disposal capacity declared administratively complete prior to the effective date of the 2006 revisions must submit modifications required by the revisions within one year after the Commission's decision on the application becomes final and appealable, unless a longer time period is specified in the rules. For those applications for modifications or for amendments that do not increase solid waste disposal capacity that are filed before the effective date of the 2006 revisions or within 180 days thereafter, the owner or operator must submit the required modifications within 180 days after the 2006 rules become effective, unless a longer time period is specified in the rules. LS/KW; all agree.

(12) Adopt the ED's recommended changes set forth in memoranda dated 2/17/06, 2/24/06, and/or 2/28/06, except with regard to the items changed in Nos. 1-11, above. Adopt the new, amended, and repealed rules in 30 TAC Ch. 330 regarding Municipal Solid Waste. KW/LS; all agree.

Continued from the February 1, 2006 agenda.

Item 2. **Docket No. 2005-1084-RUL.** Consideration of the adoption of the repeal of Section 116.621 of **30 TAC Chapter 116**, Control of Air Pollution by Permits for New Construction or Modification and the amendment of Section 106.534 of **30 TAC Chapter 106**, Permits by Rule.

The rulemaking would repeal the current standard permit authorizing air emissions from municipal solid waste landfills in conjunction with the adoption of a new standard permit in 30 TAC Chapter 330, Municipal Solid Waste. The adoption would withdraw the September 11, 2000, submittal of Section 116.621 to the United States Environmental Protection Agency as a revision to the state implementation plan. This action would also amend the permit by rule applicable to air emissions from municipal solid waste landfills to limit the authorization of air emissions to small landfills and solid waste transfer stations. The proposed rules were published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5539, 5543). (Beecher Cameron, John Minter) (Rule Project No. 2003-066-116-PR)

Adopt the repeal of Section 116.621 of 30 TAC Chapter 116 and the amendment of Section 106.534 of 30 TAC Chapter 106. LS/KW; all agree.

Continued from the February 1, 2006 agenda.

Item 3. **Docket No. 2005-1359-RUL.** Consideration for publication of proposed amendments to **30 TAC Chapter 39**, Public Notice, Sections 39.501, 39.503, and 39.651. The proposed rulemaking would implement the requirements of Sections 1, 2, and 3 of House Bill 1609, 79th Legislature, 2005, Regular Session.

The proposed rulemaking would make public meetings for solid waste applications discretionary rather than mandatory. (John E. Williams) (Rule Project No. 2005-068-039-LS)

Approve publication of, and hearing on, proposed amendments to 30 TAC Chapter 39, Sections 39.501, 39.503, and 39.651; with additional provision regarding what constitutes "substantial interest" for purposes of these sections provided by the Commissioners at the dais. LS/KW; all agree.

EXECUTIVE SESSION

Item 4. **Docket No. 2006-0001-EXE.** The Commission will meet in closed session to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the Commission's Executive Director, as permitted by Section 551.074 of the Texas Open Meetings Act, Chapter 551 of the Government Code. The Commission may also meet in

open session to take action on this matter as required by Section 551.102 of the Texas Open Meetings Act, Chapter 551 of the Government Code.

The Commissioners' did not meet in Executive Session.

Item 5. **Docket No. 2006-0002-EXE.** The Commission will conduct a closed meeting to receive legal advice and will discuss pending or contemplated litigation, settlement offers, and/or the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of specific Commission employees, as permitted by Sections 551.071 and 551.074, the Open Meetings Act, codified as Chapter 551 of the Government Code. The Commission may also meet in open session to take action on a legal or personnel matters considered in the closed meeting as required by Section 551.102 of the Texas Open Meetings Act, Chapter 551 of the Government Code.

The Commissioners' did not meet in Executive Session.

Item 6. **Docket No. 2006-0003-EXE.** The Commission will conduct a closed session to discuss their duties, roles, and responsibilities as Commissioners of the TCEQ pursuant to Section 551.074 of the Open Meetings Act, Codified as Chapter 551 of the Government Code. The Commission may also meet in open session to take action on this matter as required by Section 551.102 of the Texas Open Meetings Act, Chapter 551 of the Government Code.

The Commissioners' did not meet in Executive Session.

(PERSONS WITH DISABILITIES WHO PLAN TO ATTEND THE TCEQ AGENDA AND WHO MAY NEED AUXILIARY AIDS OR SERVICES SUCH AS INTERPRETERS FOR PERSONS WHO ARE DEAF OR HEARING IMPAIRED, READERS, LARGE PRINT, OR BRAILLE ARE REQUESTED TO CONTACT OFFICE OF THE CHIEF CLERK AT (512) 239-3300 AT LEAST TWO (2) WORK DAYS PRIOR TO THE AGENDA, SO THAT APPROPRIATE ARRANGEMENTS CAN BE MADE. PERSONS WHO DESIRE THE ASSISTANCE OF AN INTERPRETER IN CONJUNCTION WITH THEIR ORAL PRESENTATION AT THIS TCEQ AGENDA ARE REQUESTED TO CONTACT THE OFFICE OF THE CHIEF CLERK AT (512) 239-3300 AT LEAST FIVE (5) WORK DAYS PRIOR TO THE AGENDA SO THAT APPROPRIATE ARRANGEMENTS CAN BE MADE.)

REGISTRATION FOR AGENDA STARTS AT 8:45 A.M. UNTIL 9:30 A.M. PLEASE REGISTER BETWEEN THESE TIMES. LATE REGISTRATION COULD RESULT IN YOUR MISSING THE OPPORTUNITY TO COMMENT ON YOUR ITEM.

AGENDA

Wednesday, March 1, 2006

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

1:00 P.M.

12100 Park 35 Circle
Room 201S, Bldg. E

STATE IMPLEMENTATION PLAN MATTERS

- Item 1. **Docket No. 2005-1871-SIP.** Consideration for publication of, and hearing on, proposed revisions to the state implementation plan to implement the **Federal Clean Air Interstate Rule (CAIR)** and **House Bill 2481** of the 79th Texas Legislature, Regular Session. The proposed revisions incorporate the CAIR by reference and prescribe the statewide emissions budgets for oxides of nitrogen (NO_x) and sulfur dioxide (SO₂) for electric generating units (EGUs) established in the CAIR by requiring EGUs to participate in a United States Environmental Protection Agency (EPA) administered interstate cap and trade system that caps emissions in two stages. These revisions, once adopted, would fulfill the State's obligation for interstate transport of PM_{2.5} under section 110(a)(2)(D) of the Federal Clean Air Act (FCAA), as determined by the EPA in the CAIR. (Kim Herndon, Terry Salem) (Project No. 2005-048-SIP-NR)

Approve for publication of, and hearing on, proposed revisions to the state implementation plan to implement the Federal Clean Air Interstate Rule (CAIR) and House Bill 2481 of the 79th Texas Legislature. KW/RM; all agree.

- Item 2. **Docket No. 2005-1872-SIP.** Consideration for publication of, and hearing on, proposed revisions to state plan for designated facilities and pollutants, to implement the **Federal Clean Air Mercury Rule (CAMR)** and **House Bill 2481** of the 79th Texas Legislature, 2005, Regular Session. The proposed revisions incorporate the CAMR by reference and prescribe mercury emissions standards for coal-fired electric generating units (EGUs) statewide. The proposed revisions require EGUs to participate in a United States Environmental Protection Agency (EPA) administered interstate cap and trade system that provides each state a mercury emissions budget and caps total nationwide emissions in two stages. These revisions, once adopted, would fulfill the State's obligation to establish standards of performance for new and existing stationary sources under section 111 of the Federal Clean Air Act, as determined by the EPA in the CAMR. (Kim Herndon, Laura Pfefferle) (Project No. 2005-049-SIP-NR)

Approve publication of, and hearing on, proposed revisions to state plan for designated facilities and pollutants, to implement the Federal Clean Air Mercury Rule (CAMR) and House Bill 2481 of the 79th Texas Legislature. KW/RM; all agree.

RULE MATTERS

- Item 3. **Docket No. 2006-1869-RUL.** Consideration for publication of, and hearing on, proposed new Sections 101.501 - 101.504, 101.506, and 101.508 of **30 TAC Chapter 101**, General Air Quality Rules; amended Sections 122.10, 122.12, 122.120, 122.410, and new Sections 122.420, 122.422, 122.424, 122.426, 122.428, 122.440, 122.442, 122.444, 122.446, and 122.448 of **30 TAC Chapter 122**, Federal Operating Permits Program.

The proposed new sections of Chapter 101 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan. The proposed rulemaking would amend Chapter 101 to incorporate by reference the model trading rule requirements of the Clean Air Interstate Rule (CAIR). CAIR is a federal program promulgated to reduce the interstate transport of fine particulate matter through the control of nitrogen oxides (NO_x) and SO₂ emissions. House Bill 2481, 79th Legislature, 2005, directed the commission to meet the CAIR reduction requirements by incorporating the CAIR model trading rules by reference and participating in an EPA-administered cap and trade program for annual NO_x and annual SO₂ emissions. The bill also provided specific direction for the methodology to be used in allocating the NO_x trading budget provided to Texas, identified an amount of CAIR NO_x allowances to be set aside for new sources, and specified that reductions associated with CAIR would only be required from new and existing electric generating units.

The proposed rulemaking would also amend Chapter 122 to incorporate the permitting requirements for CAIR and the Clean Air Mercury Rule (CAMR) by reference. The CAIR and CAMR permits will establish federal enforceability of the CAIR and CAMR trading programs by listing all applicable requirements of the trading programs applicable to each CAIR and CAMR unit at the source. (Cory Chism, Kim Herndon, Terry Salem) (Rule Project No. 2005-046-101-EN)

Approve publication of, and hearing on, proposed new Sections 101.501 - 101.504, 101.506, and 101.508 of 30 TAC Chapter 101; amended Sections 122.10, 122.12, 122.120, 122.410, and new Sections 122.420, 122.422, 122.424, 122.426, 122.428, 122.440, 122.442, 122.444, 122.446, and 122.448 of 30 TAC Chapter 122; with additional preamble language provided by the Commissioners at the dais; the hearings are to be held locally in the Houston, Dallas/Ft. Worth, and Austin areas. KW/RM; all agree.

- Item 4. **Docket No. 2005-1870-RUL.** Consideration for publication of, and hearing on, proposed new Section 101.601 and Section 101.602 of **30 TAC Chapter 101**, General Air Quality Rules. The proposed rulemaking would amend Chapter 101 to incorporate by reference the model trading rule requirements of the Clean Air Mercury Rule (CAMR), and would revise the Federal Clean Air Act, Section 111 state plan. CAMR is a federal program promulgated to permanently cap and reduce mercury emissions from new and existing coal-fired electric generating units nationwide.

House Bill 2481, 79th Texas Legislature, 2005, Regular Session, directed the commission to meet the CAMR reduction requirements by incorporating the CAMR model trading rules by reference and participating in a United States Environmental Protection Agency-

administered cap and trade program for annual mercury emissions. (Cory Chism, Kim Herndon, Laura Pfefferle) (Rule Project No. 2005-047-101-EN)

Approve publication of, and hearing on, proposed new Section 101.601 and Section 101.602 of 30 TAC Chapter 101; with additional preamble language provided by the Commissioners at the dais; the hearings are to be held locally in the Houston, Dallas/Ft. Worth, and Austin areas. KW/RM; all agree.

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/s/ Matt Beeter
Assistant General Counsel,
Matt Beeter

3/28/2006
Date