

The Texas Commission on Environmental Quality (commission) proposes an amendment to §106.534.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The commission proposes an amendment to §106.534, Municipal Solid Waste Landfills and Transfer Stations, to state the specific activities that are permitted under the section. Those activities are cell construction, waste disposal, and waste transfer. The current rule language states that municipal solid waste landfills (MSWLFs) and waste transfer stations operating in compliance with the Texas Solid Waste Disposal Act are permitted by rule. This language may be misleading to landfill owners and operators and the general public because it implies that any and all activities at a landfill are permitted by this rule. The only facility authorized under the permit by rule, however, is the landfill itself. The commission proposes to include eligibility criteria for authorization under §106.534 in order to clarify the scope of activities and landfill size that will maintain emissions to an insignificant level for purposes of meeting statutory requirements of Texas Health and Safety Code (THSC), Texas Clean Air Act, (TCAA), §382.05196. Some landfill sites may also conduct various activities that would require separate authorizations. Landfills that accept 25 tons or less per day of waste will have the option of authorizing additional facilities under Chapter 106.

Air dispersion models were used to estimate the downwind concentration of pollutants emitted from landfills and transfer stations. The commission currently uses the Industrial Source Complex model, which is the United States Environmental Protection Agency's (EPA's) preferred model for the new source review program. The model's predictions are conservative, based on the general assumptions used to develop the model as well as the engineering assumptions used to determine emission rates. In addition, it is generally assumed that all sources emit pollutants simultaneously at maximum rates, and

during worst-case meteorological conditions. These assumptions are not expected to occur in actual operation of the sources modeled. The modeling for this permit by rule was conducted to evaluate the worst-case operating scenarios for a landfill that is larger in size than a landfill that could be authorized under the revised permit by rule. Pollutants evaluated included particulate matter (PM) and volatile organic compounds (VOCs), and the commission determined that the PM and VOC emissions from a landfill authorized under §106.534 would be less than or equal to the emissions used in the modeling demonstration. Therefore, the PM emissions from landfills being permitted by this rule would be protective of human health and the environment. Emissions from roads were not evaluated because they are not considered a facility as defined in TCAA, §382.003(6). There are no maintenance, start-up, or shutdown emissions from the landfill or transfer station activities permitted by this rule because these types of emissions are not expected at these sites.

In a separate action, the commission is also proposing a new air standard permit in 30 TAC Chapter 330, Subchapter U, Standard Air Permits for Municipal Solid Waste Landfill Facilities and Transfer Stations for MSWLFs receiving nonhazardous waste. The subchapter will include various facilities commonly found at landfill and waste transfer sites and is intended for use by larger MSWLFs with more extensive support activities. A corresponding rulemaking that includes changes to 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, is published in this issue of the *Texas Register*.

SECTION DISCUSSION

§106.534. Municipal Solid Waste Landfills and Transfer Stations.

The commission proposes an amendment to specify that landfill cell construction and waste disposal activities at transfer stations of the types specified may be authorized under this section. Landfill cell construction activities may include unloading, spreading, or compacting of waste and applying daily, immediate, or final cover. The current version of this permit by rule does not limit the type of landfill authorized if it complied with the Texas Solid Waste Disposal Act. Reference to the Texas Solid Waste Disposal Act was removed from this section because it included the authorization of industrial landfills, in addition to other waste operations such as bioreactors. This proposed amendment limits the type of landfill to which the permit by rule is applicable in order to exclude industrial landfills and bioreactors.

Use of permits by rule are limited by TCAA, §382.05196, to those facilities that would make an insignificant contribution of air contaminants to the atmosphere. The proposed new §106.534(1) specifies when sites having facilities other than landfill cell construction and waste disposal would not qualify for the permit by rule and must meet the conditions of the concurrently proposed Chapter 330, Subchapter U, or apply for a permit under Chapter 116. This would include new or modified landfills and transfer stations that do not meet the requirements of this permit by rule authorization. Some examples of types of facilities common at landfills that are not included in this rule are engines and storage tanks.

The proposed new §106.534(2) requires a valid permit or registration under §330.7, Permit Required, when claiming this authorization to ensure compliance with the commission's solid waste regulations.

The proposed new §106.534(3) requires that the site have a design capacity of less than 2.5 million megagrams (Mg) by mass or 2.5 million cubic meters by volume. This restriction will apply to landfills that are new or modified after the effective date of this rule.

The proposed new §106.534(4) requires that the site have a non-methane organic compound (NMOC) emission rate of less than 50 Mg per year (Mg/yr). This emission rate was selected based on the requirements in 40 Code of Federal Regulations (CFR) Part 60, Subpart WWW, Standards of Performance for Municipal Solid Waste Landfills. A landfill that is subject to 40 CFR Part 60, Subpart WWW and has an NMOC emission rate equal to or greater than 50 Mg/yr, must have a gas collection and control system preapproved and installed. The permit by rule authorization is intended to be used by those landfills that are small enough not to generate the amount of landfill gas that requires a gas collection and control system. In order to evaluate a worst-case scenario for landfill and transfer station fugitive gas emissions, an air quality dispersion modeling analysis was performed to evaluate the effect based on the 50 Mg/yr NMOC emission rate. The air quality dispersion modeling assumed the nature and characteristic for the transfer stations and landfills fugitive emissions were identical, which is an overly conservative approach. Upon the evaluation of the modeling results, the commission concluded that the MSWLF and transfer station emissions are protective of human health and the environment, and that these uncontrolled emissions did not jeopardize public health and welfare.

The proposed new §106.534(5) requires that the emissions from the entire site do not exceed 25 tons per year of VOCs and PM. Air dispersion modeling was performed to verify that these limits are protective of human health and the environment.

Proposed §106.534(6) states that visible emissions from the site must not leave the property for a period exceeding 30 seconds in any six-minute period as determined by EPA Test Method 22. This opacity limit constitutes a reasonable measure of best available control technology standards of the air permits program and should minimize the potential for dust nuisances.

The proposed new §106.534(7) authorizes stand-alone transfer stations located at sites other than an MSWLF and requires compliance with the Texas Solid Waste Disposal Act. These stand-alone sites with a capacity greater than 40 cubic yards must be located such that any emission source is located a minimum of 165 feet from the nearest off-site receptor. The nearest off-site receptor is defined as any recreational area, commercial or industrial structure, residence, or other normally occupied structures not used solely by the owner or operator of the transfer station. The 165-foot distance limit was derived from the air quality dispersion modeling, which shows that human health and the environment are not adversely affected at this distance from the source of emissions. Stand-alone transfer stations with a capacity of 40 cubic yards or less do not have the 165-foot distance limit. This distance requirement does not apply to transfer stations located at a landfill because these sites have other distance requirements, such as setback, specified by Chapter 330, Municipal Solid Waste.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that, for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rule. The proposed rule may require some governmental entities that operate MSWLFs to acquire a standard permit instead of operating the landfill under a permit by rule but will not be charged

any fee.

The proposed rule would clarify that only landfill cell construction, waste disposal, and transfer stations can be permitted by this rule. An MSWLF exceeding a certain capacity, having NMOC emissions above proposed levels, having VOC or PM emissions above proposed levels, or engaging in activities other than landfill cell construction and waste disposal would be required to meet the conditions of the standard permit or apply for a permit under Chapter 116 instead of operating under a permit by rule. Currently, about 120 local government MSWLFs operate under a permit by rule. Only local government MSWLFs not in compliance with the permit by rule or that, in the future, operate in a manner requiring compliance with the standard permit would be affected by the proposed rule. At this time, none of the 120 identified facilities are anticipated to be affected.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years that the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rules will be proper permitting and authorization of MSWLFs and their activities. The proposed rule will not have a significant fiscal impact on large businesses. Large businesses operating MSWLFs required to obtain authorization under the standard permit will be required to certify under the new air standard permit in Chapter 330, Subchapter U, but will not be charged any fee. Currently, it is estimated that 30 MSWLFs operating under a permit by rule are owned by individuals or businesses. Only those MSWLFs that operate in a manner requiring compliance with the standard permit would be affected by the proposed rule.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. Typically, MSWLFs needing authorization under the proposed standard permit are not owned or operated by small or micro-businesses. If a small or micro-business had to acquire a standard permit to operate a MSWLF, it would experience the same permitting costs as those experienced by large businesses or governmental entities.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission 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 action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed amendment does not meet the definition of a “major environmental rule” as defined in that statute. According to Texas Government Code, §2001.0225(g)(3), a “major environmental rule” is a rule that is specifically intended 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 intent of this proposed rulemaking is to resolve the misinterpretation that the current permit by rule language authorizes all activities at an MSWLF or transfer station when in fact various activities beyond cell construction require separate authorizations. The proposed amendment to §106.534 does not meet the definition of “major environmental rule” because it does not 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 purpose of the amendment is to detail precisely what activities are authorized under this section. The current rule language may lead to confusion among landfill operators and the general public as to what activities are authorized. The rulemaking is prospective and would neither affect facilities currently claiming the existing permit by rule, nor prevent landfills or transfer facilities from obtaining the necessary authorizations to construct.

In addition, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed 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) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the proposed amendment does not meet any of the four applicability requirements. Specifically, the proposed amendment implements the requirements of THSC, TCAA, §382.05196, regarding Permits by Rule. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rulemaking action and performed a preliminary assessment of whether this action would constitute a takings under Texas Government Code, Chapter 2007.

Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional

taking of private real property. This rule is proposed to amend §106.534 so that only cell construction and waste disposal activities are authorized under this section. The purpose of the amendment is to detail precisely what activities are authorized under this section. The current rule language may lead to confusion among landfill operators and the general public as to what activities are, or are not, authorized. Landfill owners and the general public will benefit from clearer rule language that specifies the requirements for landfill and transfer station operations that use this section to authorize air emissions. These requirements are established in order to protect public health and welfare from air emissions from these types of facilities. Landfill facilities that have activities other than cell construction and waste disposal, and transfer stations that cannot meet the setback requirements of the amended section, would not be precluded from obtaining an air quality permit through other authorizations. The proposed amendment does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. The proposed amendment does not add a requirement for an air authorization for landfills and transfer stations that did not exist previously. Therefore, the amendment to Chapter 106 would not constitute a takings under Texas Government Code, Chapter 2007. The commission invites public comment on the takings impact assessment.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the

Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and the proposed revisions will maintain the same level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Because §106.534 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program, owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their operating permit to include the revised §106.534 requirement for each landfill or transfer station affected by the revisions at their site.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on September 29, 2005, at 10:00 a.m. in Building C, Room 131E, 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 before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact Joyce Spencer, Office of Legal Services at (512) 239-5017. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2003-066-116-PR. Comments must be received by 5:00 p.m., October 31, 2005. Copies of the proposed rule can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Beecher Cameron, Air Permits Division, at (512) 239-1495.

SUBCHAPTER X: WASTE PROCESSES AND REMEDIATION

§106.534

STATUTORY AUTHORITY

The amendment is proposed under THSC, §382.011, which authorizes the commission to administer the requirements of the TCAA; THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; THSC, §382.057, which authorizes the commission to exempt from permitting, changes within any facility that would not make a significant contribution of air contaminants to the atmosphere; THSC, §382.051, which authorizes the commission to issue permits for construction of facilities that emit air contaminants; and THSC, §382.05196, which authorizes the commission to adopt permits by rule for types of facilities that would not make a significant contribution of air contaminants to the atmosphere.

The proposed amendment implements §§382.011, 382.017, 382.057, 382.051, and 382.05196.

§106.534. Municipal Solid Waste Landfills and Transfer Stations.

Municipal solid waste landfill (MSWLF) cell construction or modification of MSWLF Type I, Type I-AE, Type II, Type III, Type IV, Type IV-AE, and Type V transfer stations as defined in §330.5 of this title (relating to Classification of Municipal Solid Waste Facilities) that meet the conditions listed in this section [landfills and waste transfer stations operating in compliance with the Texas Solid Waste Disposal Act] are permitted by rule.

(1) The following are not authorized by this section:

(A) MSWLF sites accepting more than 25 tons per day of waste that have facilities other than cell construction and waste disposal; or

(B) maintenance, startup, shutdown, or emission excursions under Chapter 101, Subchapter F of this title (relating to Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities).

(2) The owner or operator must have obtained a valid permit or registration under §330.7 of this title (relating to Permit Required), for the site.

(3) The MSWLF or transfer station must have a design capacity of less than 2.5 million megagrams (Mg) by mass or 2.5 million cubic meters by volume.

(4) The MSWLF or transfer station must have a non-methane organic compound emission rate of less than 50 Mg per year as determined by United States Environmental Protection Agency (EPA) publication AP-42, Compilation of Air Pollutant Emission Factors.

(5) Emissions from the site are limited to 25 tons per year of volatile organic compounds or particulate matter. There are no short-term limitations for particulate matter and volatile organic compounds.

(6) Visible emissions from the site must not leave the property for a period exceeding 30 seconds in any six-minute period as determined by EPA Test Method 22, as found in 40 Code of Federal Regulations Part 60, Appendix A.

(7) Transfer stations not located at an MSWLF site shall:

(A) operate in compliance with the Texas Solid Waste Disposal Act, and;

(B) be located such that all emission sources at the transfer station are located a minimum distance of 165 feet from the nearest receptor if the transfer station has a permitted capacity greater than 40 cubic yards. A receptor is defined as any recreational area, commercial or industrial structure, residence, or other normally occupied structures not used solely by the owner or operator of the transfer station.

(8) Facilities shall comply with applicable requirements of all federal regulations and state rules.