

The Texas Commission on Environmental Quality (commission) adopts the repeal of §116.621 *without change* as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5543).

The repeal will also be submitted to the United States Environmental Protection Agency (EPA) withdrawing this section from consideration as a revision to the state implementation plan originally submitted on September 11, 2000.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED REPEAL

The repealed standard permit for municipal solid waste landfills required that separate authorizations be obtained for activities typically found at larger landfills but that do not directly involve landfill cell construction or waste disposal. These activities include fuel storage, welding, abrasive blasting, and tire shredding. The commission adopted a new standard permit that can be used to authorize these and most other activities without obtaining the separate authorization that it has placed in 30 TAC Chapter 330, Municipal Solid Waste, in order to consolidate rules for facilities that have environmental effects in more than one media.

SECTION DISCUSSION

The standard permit repealed in this action is replaced by a standard permit in new Subchapter U of Chapter 330 that authorizes air emissions from landfills and landfill support activities. The new standard permit in Chapter 330 will take effect on September 1, 2006, which will also be the effective date of the repeal of §116.621.

FINAL 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 repeal does not meet the definition of a “major environmental rule” as defined in that statute. Therefore, Texas Government Code, §2001.0225, does not apply to this rulemaking. 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. Under the authority of Texas Clean Air Act, §382.05195, the commission adopted a new standard permit in Chapter 330, Subchapter U, to replace the repealed standard permit. The standard permit in Chapter 330 can be used to authorize other common landfill activities that are not allowed under §116.621 and that require separate authorization.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this 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 repeal is neither a statutory nor a constitutional taking of private real property. The repeal of §116.621 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. Consequently, this action does not meet the definition of a takings under Texas Government Code, §2007.002(5). This rulemaking repeals the municipal solid waste landfill standard permit adopted by the commission in

§116.621. A new standard permit in Chapter 330 will replace the repealed section. Landfill owners and operators would not be precluded from obtaining an air quality permit. The new standard permit will provide a single authorization for more activities at landfills than are currently allowed under §116.621. Current holders of registrations under §116.621 should certify under the new standard permit if modifications have been made to the site, but the commission will not charge an additional fee. Therefore, the repeal will not constitute a takings under Texas Government Code, Chapter 2007.

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 Texas Coastal Management Program. As required by §281.45(a)(3), Actions Subject to Consistency with the Goals and Policies of the Texas Coastal Management Program (CMP), 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 adopted 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 Code of Federal Regulations to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 Code of Federal Regulations 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 §116.621 contained applicable requirements 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 new standard permit in Chapter 330 for each landfill affected at their site.

PUBLIC COMMENT

The commission held a public hearing on this proposal in Austin on September 29, 2005. During the public comment period that closed on October 31, 2005, the commission received comments from Allied Waste Services (Allied), North Texas Municipal Water District (NTWMD), Russell, Moorman, and Rodriguez, LLP (RMR), and Texas Disposal Systems (TDS). All of the commenters opposed the repeal.

RESPONSE TO COMMENTS

Allied, NTWMD, TDS, and RMR urged that unmodified landfills be allowed continued use of their existing authorizations until expiration. Certification under the new air standard permit in Chapter 330 would require re-evaluation or an audit of their entire landfill operations. Allied further commented that the certification for existing landfills that have not been modified is burdensome, costly, and provides no additional benefit to human health or the environment.

The commission is deleting the certification requirement for unmodified landfills from the concurrent adoption of the new air standard permit in Chapter 330, and the authorization of unmodified landfills under §116.621 will remain in effect until normal expiration. Landfills that do not continue to meet the requirements of §116.621 because of modification or addition of other facilities to the site should be certified under the new standard permit by its effective date of September 1, 2006.

SUBCHAPTER F: STANDARD PERMITS

[\$116.621]

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeal is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382; and THSC, §382.05195, concerning Standard Permit, which authorizes the commission to issue standard permits for new and existing similar facilities.

The adopted repeal implements TWC, §5.103 and §5.105 and THSC, §§382.002, 382.011, 382.012, 382.017, 382.051, and 382.05195.

§116.621. Municipal Solid Waste Landfills.

