The Texas Commission on Environmental Quality (commission) proposes the repeal of §116.621. The repeal will be submitted to the United States Environmental Protection Agency as a revision to the state implementation plan.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED REPEAL

The commission's current standard permit for municipal solid waste landfills requires 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 drafted a new standard permit that can be used to authorize these and most other activities without obtaining the separate authorization. The commission intends to place this new air standard permit into 30 TAC Chapter 330, Municipal Solid Waste, in order to consolidate rules for facilities that have environmental effects in more than one media.

A corresponding rulemaking that includes changes to 30 TAC Chapter 106, Permits by Rule, is published in this issue of the *Texas Register*.

SECTION DISCUSSION

The commission proposes the repeal of §116.621, Municipal Solid Waste Landfills. The standard permit contained in this rule will be replaced by a standard permit authorizing air emissions from landfills and landfill support activities that will be placed into a new Subchapter U of Chapter 330. Facilities that are currently authorized will be required to certify under the new Chapter 330 standard permit within 180 days of its effective date.

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 repeal 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 repeal.

The purpose of the proposal is to repeal §116.621 of the commission's rules. A more comprehensive version of the standard permit authorizing air emissions from landfill and landfill activities will be proposed in a separate action and placed in new Subchapter U of Chapter 330. Local governments operating municipal solid waste landfills (MSWLFs) that are currently authorized under §116.621 will be required to certify under the new standard permit within 180 days of its effective date, but the commission will not charge an additional fee.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated from the changes made by the proposed repeal will be proper permitting and authorization of MSWLFs and their activities.

The proposed repeal will not have a significant fiscal impact on large businesses. Large businesses operating MSWLFs that are currently authorized under §116.621 will be required to certify under the

new standard permit within 180 days of its effective date, but the commission will not charge an additional fee.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. Typically, MSWLFs needing authorization under the current standard permit proposed for repeal and the new proposed standard permit in Chapter 330 are not owned or operated by small or micro-businesses. If a small or micro-business had to acquire a standard permit to operate an MSWLF, it would experience the same permitting costs as those experienced by large businesses or local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed repeal does not adversely affect a local economy in a material way for the first five years that the proposed repeal 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 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. The intent of this proposed rulemaking is to repeal the standard permit for MSWLFs in §116.621. Under the authority of Texas Clean Air Act, §382.05195, the commission proposes to concurrently propose a new standard permit in Chapter 330, Subchapter U, to replace the repealed standard permit. The proposed 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. Because future landfills will be authorized under the more comprehensive Chapter 330, Subchapter U standard permit, §116.621 is unnecessary. 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 repeal would be neither a statutory nor a constitutional taking of private real property. The proposed 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 proposal does not meet the definition of a takings under Texas Government Code, §2007.002(5). This rulemaking is proposed to repeal the MSWLF 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 proposed 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

will be required to certify under the new standard permit within 180 days of its effective date, but the commission will not charge an additional fee. Therefore, the proposed repeal 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 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 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 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 contains 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.

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 rules 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 F: STANDARD PERMITS

[§116.621]

STATUTORY AUTHORITY

The repeal is proposed 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 proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission 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 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 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 proposed 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.]