

The Texas Commission on Environmental Quality (TCEQ or commission) proposes an amendment to §111.209.

The amended section and corresponding revisions to the Texas state implementation plan will be submitted to the United States Environmental Protection Agency.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

A bill from the 77th Legislature, 2001 amended Texas Occupations Code, §801.361, Disposal of Animal Remains. This bill allowed the burning of animal remains if the burning occurred in a county with a population of less than 10,000, on property owned by the veterinarian, and the veterinarian did not charge for disposal. This bill did not allow the burning of medical waste associated with animal remains.

This rulemaking implements a subsequent amendment to Texas Occupations Code, §801.361. Senate Bill (SB) 216, 78th Legislature, 2003, amended Texas Occupations Code, §801.361, by allowing veterinarians to burn animal remains and associated medical waste. Associated medical waste includes: animal waste, blood, gloves, sleeves, newspapers, and plastic bags, but does not include sharps. SB 216 also changes the conditions under which a veterinarian may burn waste. The proposed amendment revises paragraph (3) by replacing the current language with a reference to amended Texas Occupations Code, §801.361. This would provide an exception to the prohibition of outdoor burning by veterinarians in accordance with Texas Occupations Code, §801.361.

In compliance with House Bill 3061, 78th Legislature, 2003, this rule has been developed in cooperation with and was approved by the Texas Animal Health Commission on December 2, 2003.

The commission simultaneously proposes in this issue of the *Texas Register* the amendment to 30 TAC §330.4, Permit Required.

SECTION DISCUSSION

The proposed amendment to §111.209, Exception for Disposal Fires, is necessary to make the burning revisions provided by SB 216 consistent with TCEQ rules. The proposed amendment revises paragraph (3) by removing the current language and replacing it with a reference to amended Texas Occupations Code, §801.361. This amendment will modify the exception to the prohibition of outdoor burning relating to burning by veterinarians to make it consistent with Texas Occupations Code, §801.361.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jan Washburn, Program Specialist in the Grants and Strategic Planning Section, determined that for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for the agency or any other unit of state government. The amendment implements the legislative directive of SB 216, 78th Legislature, 2003, which took effect September 1, 2003. Current rule language allows veterinarians to burn or bury animal remains under three conditions: 1) the property is owned by the veterinarian; 2) the activity occurs only in counties with a population of less than 10,000; and 3) the veterinarian does not charge for the burning or burial. The proposed rule will allow veterinarians to burn or bury medical waste associated with the remains of an animal, as well. However, this activity must now occur on property that is outside the corporate boundaries of a municipality or within the

corporate boundaries of a municipality as a result of an annexation that occurred on or after September 1, 2003, and the veterinarian may charge for the disposal. Ms. Washburn also determined that there will be no fiscal impact to units of local government as a result of the proposed amendment.

PUBLIC BENEFITS AND COSTS

Ms. Washburn also determined that for the first five years the proposed amendment is in effect, the anticipated public benefit will be minimal as the amendment will only apply to property outside the corporate boundaries of a municipality. This rule is expected to benefit veterinarians because they may dispose of animals on their own property, which will save them approximately \$25 to \$250 per animal.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Ms. Washburn also determined that there will be no significant fiscal implications to small or micro-businesses as a result of implementation of the proposed amendment for the first five years it is in effect. The proposed amendment will allow veterinarians to dispose of medical waste associated with the animal by burning or burying, which may be a benefit to those businesses. However, the veterinarian's property must now be outside the corporate boundaries of a municipality or within the corporate boundaries of a municipality as a result of an annexation that occurred on or after September 1, 2003. This may exclude some veterinarians in counties of less than 10,000 from burning or burying animals who were previously allowed to burn or bury before SB 216, 78th Legislature, 2003 was enacted.

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 in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in that statute. The proposed amendment to §111.209 is only intended to make existing commission rules consistent with the new legislative changes made to the Texas Occupations Code, and the proposed rule will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Therefore, the proposed amendment does not qualify as a “major environmental rule.” Furthermore, the analysis required by §2001.0225(c) does not apply because the proposed rule does not meet any of the four applicable requirements of a major environmental rule. The proposed rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or adopt a rule solely under the general powers of the agency. The rule is proposed specifically to make commission rules consistent with SB 216 and does not exceed the requirements of that bill. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rule and performed an assessment of whether the proposed rule constitutes a takings under Texas Government Code, Chapter 2007. The specific purpose of the proposed rule is to make existing commission rules consistent with the new legislative changes made to the Texas Occupations Code by SB 216. The proposed rule will substantially advance this purpose by replacing existing language with a reference to the Texas Occupations Code amended by SB 216. Promulgation and enforcement of the proposed rule will be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rule will not affect private real property rights because it will not burden, restrict, or limit an owner's property rights which would otherwise exist in the absence of the regulation. The proposed rule will actually expand the allowable uses of a veterinarian's private real property except those veterinarians in a municipality that is within a county of 10,000 or fewer people. The proposed rule does not meet the definition of a takings under Texas Government Code, §2007.002(5).

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rule in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found that the proposed rulemaking is consistent with the applicable CMP goals and policies.

The CMP goals applicable to the proposed rule include: to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas; to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; to ensure and enhance planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone; and to balance these competing interests.

CMP policy applicable to the proposed rule is 31 TAC §501.14(q), which states that TCEQ rules under Texas Health and Safety Code, Chapter 382, governing emissions of air pollutants, shall comply with regulations in Code of Federal Regulations, Title 40, adopted in accordance with Clean Air Act, 42 United States Code Annotated, §§7401, *et seq.*, to protect and enhance air quality in the coastal area so as to protect coastal natural resources areas and promote the public health, safety, and welfare.

Promulgation and enforcement of the rule will not violate or exceed any standards identified in the applicable CMP goals and policies. The proposed rule is consistent with these CMP goals and policies. The rule does not create or have a direct or significant adverse effect on any coastal natural resource areas.

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

A public hearing on this proposal will be held in Austin on June 24, 2004, at 10:00 a.m. at the Texas Commission on Environmental Quality complex in Building C, Room 131E, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to 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 the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2004-003-330-WS. Comments must be received by 5:00 p.m., June 28, 2004. For further information, please contact Phil Harwell of the Policy and Regulations Division at (512) 239-1517 or Emily Barrett of the Policy and Regulations Division at (512) 239-3546.

SUBCHAPTER B: OUTDOOR BURNING

§111.209

STATUTORY AUTHORITY

The amendment is proposed under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.018, which authorizes the commission to control outdoor burning; and §382.085, which prohibits unauthorized air emissions; and Texas Water Code, §5.103, which authorizes the commission to adopt rules.

The proposed amendment implements Texas Health and Safety Code, §382.002, concerning Policy and Purpose; §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Program; §382.017, concerning Rules; §382.018, concerning Outdoor Burning of Waste and Combustible Material; Texas Water Code, §5.103, concerning Rules; and Texas Occupations Code, §801.361, concerning Disposal of Animal Remains.

§111.209. Exception for Disposal Fires.

Outdoor burning shall be authorized for the following. [:]

(1) Domestic waste burning at a property designed for and used exclusively as a private residence, housing not more than three families, when collection of domestic waste is not provided or authorized by the local governmental entity having jurisdiction, and when the waste is generated only from that property. Provision of waste collection refers to collection at the premises where the waste is generated. The term "domestic waste" is defined in §101.1 of this title (relating to Definitions). Wastes normally resulting from the function of life within a residence that can be burned include such things as kitchen garbage, untreated lumber, cardboard boxes, packaging (including plastics and rubber), clothing, grass, leaves, and branch trimmings. Examples of wastes not considered domestic waste which cannot be burned, include such things as tires, non-wood construction debris, furniture, carpet, electrical wire, and appliances.

(2) Diseased animal carcass burning when burning is the most effective means of controlling the spread of disease.

(3) Veterinarians in accordance with Texas Occupations Code, §801.361, Disposal of Animal Remains. [Animal remains burning by a veterinarian if the burning is conducted on property owned by the veterinarian; the property is in a county with a population of less than 10,000; and the veterinarian does not charge for the burning. Animal remains refer to an animal that dies in the care of the veterinarian and does not include any other type of medical waste.]

(4) On-site burning of trees, brush, and other plant growth for right-of-way maintenance, landclearing operations, and maintenance along water canals when no practical alternative to burning

exists and when the materials are generated only from that property. Structures containing sensitive receptors must not be negatively affected by the burn. Such burning shall be subject to the requirements of §111.219 of this title (relating to General Requirements for Allowable Outdoor Burning). When possible, notification of intent to burn should be made to the appropriate commission regional office prior to the proposed burn. For a single project entailing multiple days of burning, an initial notice delineating the scope of the burn is sufficient if the scope does not constitute circumvention of the rule for a continual burning situation. Commission notification or approval is not required.

(5) Crop residue burning for agricultural management purposes when no practical alternative exists. Such burning shall be subject to the requirements of §111.219 of this title, and structures containing sensitive receptors must not be negatively affected by the burn. When possible, notification of intent to burn should be made to the appropriate commission regional office prior to the proposed burn. Commission notification or approval is not required. This section is not applicable to crop residue burning covered by an administrative order.

(6) Brush, trees, and other plant growth causing a detrimental public health and safety condition may be burned by a county or municipal government at a site it owns upon receiving site and burn approval from the executive director. Such a burn can only be authorized when there is no practical alternative, and it may be done no more frequently than once every two months. Such burns cannot be conducted at municipal solid waste landfills unless authorized under §111.215 of this title

(relating to Executive Director Approval of Otherwise Prohibited Outdoor Burning), and shall be subject to the requirements of §111.219 of this title.

