

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** November 21, 2008
Thru: LaDonna Castañuela
Chief Clerk
From: Dan Eden, Deputy Director
Office of Permitting, Remediation, and Registration
Subject: Consideration of Petitions for Proposed Rulemaking
Docket No.: 2008-1659-RUL
Rule Project No. 2009-004-PET-NR

Who Submitted the Petitions:

Marisa Perales
Counsel for Texas Campaign for the Environment, Texas Disposal Systems, Inc., Texas Disposal Systems Landfill, Inc., and Texas Landfill Management, L.L.C.
Lowerre, Frederic, Perales, Allmon & Rockwell, Attorneys at Law

Dated October 15, 2008

Received October 16, 2008

What the Petitioner Requests:

The agency received two companion petitions for rulemaking.

Petition 1: Petitioner seeks to clarify that the person who submits an application is the same person who is identified as the applicant for a permit, permit amendment, or permit modification; is in turn named as a party in any contested case proceeding; and is ultimately identified as the permittee on the face of the permit. In order to accomplish this purpose, Petitioner argues that TCEQ's rules must include a definition of "applicant" and "permittee" in §305.2 (Definitions) such that only the person responsible for overall operation of a facility may be a permittee and hence an applicant. Petitioner also claims existing §305.43(c) must be changed to require the applicant/permittee to apply for municipal solid waste (MSW) permits, permit amendments, and permit modifications in the companion petition for rulemaking.

Petition 2: Petitioner seeks to clarify that the person who submits an application is the same person who is identified as the applicant for a permit, permit amendment, or permit modification; and is in turn named as a party in any contested case proceeding; and is ultimately identified as the permittee on the face of the permit. Petitioner argues that existing §305.43(c) must be changed to require the applicant/permittee (which, by definition in the companion petition, could only be the operator) to apply for MSW permits, permit amendments, and permit modifications. Proposed definitions for "applicant" and "permittee" are included in the companion petition for rulemaking.

Recommended Action and Justification:

The executive director recommends denial of the petitions. Making the operator the sole permittee as requested by petitioners would violate state law. Specifically, Texas Health and Safety Code, §361.087(1) requires both the name of each person who owns the land on which the solid waste facility is located (the

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“owner”) and the person who is or will be the operator or person in charge of the facility (the “operator”) be included on the permit.

The Commission made clear in public hearing on May 7, 2008, that the current definitions for “owner” and “operator” in 30 TAC §§305.2(24) and (26) are identical to definitions in 40 Code of Federal Regulations (CFR) §258.2 as promulgated by the United States Environmental Protection Agency (EPA) under the Solid Waste Disposal Act. Federal rules for MSW facilities in 40 CFR Parts 257 and 258 do not define “applicant” or “permittee” or use those terms. Instead, federal rules regulate what owners and operators of MSW facilities must do in 40 CFR §§257.3-5, 257.5, 257.8, 257.9, 257.21-257.28, 257.30, 258.1-258.4, 258.10-258.16, and 258.20-258.28. Texas regulations have to be consistent with the federal regulations in order for continued authorization of the state program by the EPA.

TCEQ rules do define “applicant” in 30 TAC §3.2(3) as “a person who submits an application to the commission.” This is different from the proposed definition in the petition.

Applicable Law:

- Texas Government Code, §2001.021, which establishes the procedures by which an interested person may petition a state agency for the adoption of a rule
- 30 TAC §20.15, which provides such procedures specific to the commission
- Texas Health and Safety Code, §361.087

Affected Public:

Owners of land on which a solid waste facility is located and owners of solid waste facilities would no longer be considered permittees or be allowed to apply for new permits, permit amendment, or permit modification.

Affected Agency Programs:

Municipal Solid Waste Permits Section; Waste Permits Division; Office of Permitting, Remediation, and Registration.

Agency Contacts:

Richard Carmichael, Rule Project Manager, 239-6629, Waste Permits Division
Anthony Tatu, Staff Attorney, 239-5778
Devon Ryan, Texas Register Coordinator, 239-6090

Attachment: Petition

cc: 5 copies to the Chief Clerk for distribution
Executive Director’s Office
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