

The Texas Commission on Environmental Quality (TCEQ or commission) proposes an amendment to §330.983.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The purpose of this rulemaking is to update a cross-reference and to make non-substantive changes to update rule language to current *Texas Register* style and format requirements.

Corresponding rulemaking is published in this issue of the *Texas Register* concerning 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, to address issues raised by the United States Environmental Protection Agency (EPA) in its September 23, 2009, *Federal Register* (74 *Federal Register* 48450) notice of its intent to disapprove of the TCEQ rules that relate to the establishment of the state's qualified facilities program as a State Implementation Plan (SIP) revision.

SECTION DISCUSSION

§330.983, Definitions

The commission proposes to amend §330.983(8), Definitions, to correct a cross-reference in the definition of "Modification of existing facility" resulting from concurrently proposed amendments to Chapter 116.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has 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 changes to the rules for the qualified facilities program are administrative in nature and do not impose any new requirements on regulated parties or significantly change agency procedures.

The proposed rulemaking amends various sections of 30 TAC Chapter 116 and Chapter 330 and addresses concerns expressed by the EPA regarding the agency's qualified facilities program in its review of the SIP. The proposed changes to established rules for the qualified facilities program are administrative in nature and clarify that the rules regarding qualified facilities are restricted to minor sources and modification of minor sources. The proposed rulemaking prescribes a separate netting analysis to ensure that all net changes in emissions for the same account number remain below major modification thresholds. The proposed changes will continue to allow the qualified facilities program to function for minor changes to facilities if the specified criteria are met. The proposed rulemaking also modifies the definition of BACT and clarify its permissible use. No additional costs are imposed on facility owners or operators, and the proposed rulemaking will not have a fiscal impact on other state agencies or local governments that own or operate qualified facilities.

Since the proposed amendment to Chapter 330 is administrative in nature, it is not expected to have a fiscal impact on other state agencies or local governments.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be consistency with state rules. The proposed changes to the established rules for the qualified facilities program are administrative in nature and are not anticipated to impose any additional costs for businesses or individuals. Owners or operators of qualified facilities are not expected to experience any fiscal impacts as a result of the proposed rule.

The proposed rulemaking amends Chapter 330 and is part of a concurrent rulemaking for Chapter 116. Fiscal impacts of rules proposed for Chapter 116 can be found in a separate fiscal note for that chapter.

The proposed rulemaking amends Chapter 330 to update a cross-reference to a proposed amendment to Chapter 116. Specifically, the agency is proposing to renumber the existing paragraphs of §116.10 in a separate rulemaking, and the proposed Chapter 330 rule will reference the proposed change in Chapter 116 to ensure that cross-reference is correct and there is consistency between the two chapters.

Since the proposed amendment to Chapter 330 is administrative in nature, it is not expected to have a fiscal impact on other businesses or individuals.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. The proposed rule is administrative in nature and will not have a fiscal impact on small businesses.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule complies with federal regulations and does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has 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 has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule the specific intent of which is 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 sole intent of the proposed rulemaking is to correct a cross-reference to §116.10 and make non-substantive formatting and style changes. In a concurrent rulemaking, the commission is proposing to renumber the paragraphs in §116.10. The rule will 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 because the rule merely corrects the changed cross-reference.

Comments on this draft determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS portion of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for this proposed rule in accordance with Texas Government Code, §2007.043. The following is that assessment. The specific purpose of this rulemaking is to incorporate a corrected cross-reference to §116.10. The proposed rule does not affect a landowner's rights in private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and determined that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural

Resources Code, §§33.201 *et seq.*, and commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, and found the rulemaking is consistent with the applicable CMP goals and policies. CMP goals applicable to the rules include to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; and to balance benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring, and enhancing CNRAs, the benefits from minimizing loss of human life and property, and the benefits from public access to and enjoyment of the coastal zone.

CMP policies applicable to the rules include the construction and operation of solid waste treatment, storage, and disposal facilities and discharge of municipal and industrial waste to coastal waters.

The specific purpose of this proposal is to update a cross-reference in the rule. Promulgation and enforcement of the rule will not violate or exceed any standards identified in the applicable CMP goals and policies because the rule is consistent with these CMP goals and policies; the rule does not create or have a direct or significant adverse effect on any CNRAs; and will ensure proper municipal solid waste (MSW) management in all regions of the state, including coastal areas. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

Written comments on the consistency of the proposed rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on May 10, 2010 at 10:00 a.m. in Building E, Room 201S, 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 prior to the hearing. The commission is soliciting comment only on the proposed cross-reference change in paragraph §330.983(8), and is not soliciting comment on the remainder of the paragraphs in §330.983.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Devon Ryan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2010-006-116-PR. The comment period closes May 17, 2010. Copies of the proposed rulemaking 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 Mr. Beecher Cameron, Air Permits Division, at (512) 239-1495.

**SUBCHAPTER U: STANDARD AIR PERMITS FOR MUNICIPAL SOLID WASTE
LANDFILL FACILITIES AND TRANSFER STATIONS**

§330.983

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and Texas Health and Safety Code (THSC), §361.011, concerning Commission's Jurisdiction: Municipal solid Waste, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste; §361.024, concerning Rules and Standards, which provides the commission with rulemaking authority; §361.061, concerning Permits: Solid Waste Facility, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; §363.061, concerning Commission Rules; Approval of Regional and Local Solid Waste Management Plan, which authorizes the commission to adopt rules relating to regional and local solid waste management plans; and §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.003, concerning Definitions; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §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; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; §382.0511, concerning Permit Consolidation and Amendment, which allows the commission to combine permits; §382.0512, concerning Modification of

Existing Facility, which restricts what the commission may consider in determining a facility modification; §382.0518, concerning Preconstruction Permit, which authorizes the commission to require a permit before a facility is constructed or modified; and §382.05195, concerning Standard Permit, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The proposed amendment implements THSC, §§361.002, 361.011, 361.024, 361.061, 361.123, 361.124, 363.061, 382.002, 382.003, 382.011, 382.051, and 382.05195.

§330.983. Definitions.

The terms used in this subchapter have the following meanings, unless the context clearly indicates otherwise.

(1) **Bioremediation**--The biological breakdown of waste occurring at a landfill prior to placing the waste in a landfill cell. Processing may include adding supplements and oxygen to speed the natural biological processes, after which the material will meet landfill acceptance standards and can be placed in a cell. Common sources of material requiring bioremediation are transportation or pipeline accidents and spills.

(2) **Category 1 municipal solid waste landfills**--Landfills with a design capacity less than 2.5 million megagrams by mass or 2.5 million cubic meters by volume that operate in accordance with 40 Code of Federal Regulations Part 60, Subpart WWW, or Chapter 113, Subchapter D of this title (relating to Designated Facilities and Pollutants), as applicable.

(3) **Category 2 municipal solid waste landfills**--Landfills with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters and a calculated uncontrolled non-methane organic compound emission rate less than 50 megagrams per year that operate in accordance with 40 Code of Federal Regulations Part 60, Subpart WWW or Chapter 113, Subchapter D of this title (relating to Designated Facilities and Pollutants), as applicable.

(4) **Category 3 municipal solid waste landfills**--Landfills with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters and a calculated uncontrolled non-methane organic compound emission rate greater than or equal to 50 megagrams per year that operate in accordance with 40 Code of Federal Regulations Part 60, Subpart WWW, 40 Code of Federal Regulations Part 63, Subpart AAAA, or Chapter 113, Subchapter D of this title (relating to Designated Facilities and Pollutants), as applicable.

(5) **Construction**--Any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in actual emissions.

(6) **Facility**--A discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not a facility.

(7) **Modification**--As pertaining to a municipal solid waste landfill defined in 40 Code of Federal Regulations §60.751, means an increase in the permitted volume design capacity of the landfill by either horizontal or vertical expansion based on its permitted design capacity after May 30, 1991.

Modification does not occur until the owner or operator commences construction on the horizontal or vertical expansion.

(8) **Modification of existing facility**--Any physical change in, or change in the method of operation of, a facility in a manner that increases the amount of any air contaminant emitted by the facility into the atmosphere or that results in the emission of any air contaminant not previously emitted. The term does not include conditions listed in the definition of modification of existing facility under §116.10 [§116.10(11)] of this title (relating to General Definitions).

(9) **Process**--Any action, operation, or treatment embracing chemical, commercial, industrial, or manufacturing factors such as combustion units, kilns, stills, dryers, roasters, and equipment used in connection with them, and all other methods or forms of manufacturing or processing that may emit smoke, particulate matter, gaseous matter, or visible emissions.

(10) **Project**--As pertaining to a municipal solid waste landfill defined in 40 Code of Federal Regulations §60.751, for the purposes of this subchapter means the construction or modification of a facility or a group of facilities submitted under the same registration.

(11) **Receptor**--Any off-property recreational area, commercial/industrial structure, residence, or other normally occupied structures not used solely by the owner and/or operator of the municipal solid waste landfill site.

(12) **Site**--All regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person. Site includes any property identified in the permit or used in connection with the regulated activity at the same street address or location.

(13) **Source**--A point of origin of air contaminants, whether privately or publicly owned or operated.

(14) **Waste solidification**--The physical process used to reduce the mobility of constituents in a waste or to eliminate free liquids.

(15) **Waste stabilization**--The chemical process used to stabilize the volatility of the constituents in a waste.