

The Texas Natural Resource Conservation Commission (commission) proposes new Subchapter D, concerning Designated Facilities and Pollutants, and new §§113.2060, 113.2061, 113.2067, and 113.2069, concerning Municipal Solid Waste (MSW) Landfills. The commission also proposes to add emission standards for non-methane organic compounds (NMOC) and control plan requirements to the Texas Air Control Board Plan for the Control of Sulfuric Acid Mist, Total Reduced Sulfur, and Fluoride Emissions from Existing Facilities. This plan would also be renamed to the Texas State Plan for the Control of Designated Facilities and Pollutants. The proposed new sections and state plan revisions are based on emission guidelines published by the United States Environmental Protection Agency (EPA) on March 12, 1996, and amended on August 17, 1998 under the authority of §111(d) of the Federal Clean Air Act (FCAA). A copy of the emission guidelines is available either through EPA or through the commission. The EPA went through litigation with the National Solid Wastes Management Association after adoption of the MSW landfill rules. A litigation agreement was reached in November 1997 and signed during the week of March 16, 1998. The amendment date that resulted from that litigation will be incorporated into this proposal once the amendments have been published by EPA. Title 40 Code of Federal Regulations (CFR) Part 60, §60.23(a) requires that within nine months after notice of the availability of a final emission guideline document is published for a designated facility, as defined in 40 CFR Part 60, §60.21(b), each state must adopt and submit to the EPA a plan for the control of the designated pollutant to which the emission guideline document applies. The executive director requested and received a one-year extension to this requirement, until December 31, 1997, in order to fully address concerns regarding the regulation by this rule of closed landfills. On December 9, 1997, EPA also extended the deadline for Texas to submit a rule under §111(d) until July 31, 1998.

## EXPLANATION OF PROPOSED RULES

Proposed new §113.2060, concerning Definitions, defines terms used in the new subchapter that are either previously undefined or are used differently by the federal rule that is the basis for the proposed rule. Definitions for the terms “construction” and “modification” were taken from 40 CFR Part 60, §60.2, concerning Definitions. Definitions for the terms “reconstruction” and “fixed capital cost,” were taken from 40 CFR Part 60, §60.15, concerning Reconstruction. The definition for the term “existing municipal solid waste landfill” was taken from 40 CFR Part 60, §60.33(c), concerning Emission Guidelines for Municipal Solid Waste Landfills with additional clarifications. The definitions for “modification,” “reconstruction” and “existing municipal solid waste landfill” were augmented with language from 40 CFR Part 60, §60.32(c), concerning Designated Facilities, to make the definitions specific to this proposed rule.

The definition of “existing municipal solid waste landfill” was further modified with regard to the closed landfills that will be affected by the proposed rules. The EPA defined existing municipal solid waste landfill as any that has accepted waste at any time since November 8, 1987. The commission has determined that MSW landfills which closed prior to October 9, 1993 did so because those facilities were economically unable to comply with 40 CFR Part 258 (popularly known as the “Subtitle D” requirements). Requiring these facilities to comply with new standards more than four years after they closed for economic reasons would be unreasonable. MSW landfills that were closed prior to October 9, 1993, have been excluded from this rule requirements in accordance with 40 CFR §60.24(f), which allows the state rule to be less stringent for a particular designated class of facilities provided that the

state can show that factors exist specific to the class of facilities that make application of a less stringent standard significantly more reasonable.

Proposed new §113.2061, concerning Standards for Air Emissions, provides the air quality standards for existing MSW landfills. Proposed §113.2061(a) requires that owners or operators of an existing MSW landfill comply with the provisions of the New Source Performance Standard for MSW landfills. This is consistent with federal requirements (40 CFR Part 60, §60.24(c)), which specify that the emission standards be no less stringent than the corresponding emission guidelines. The emission guidelines require existing landfills with a design capacity greater than or equal to 2.5 million (M) megagrams (Mg) (approximately 2.75 M tons) or 2.5 M cubic meters to annually calculate estimated non-methane organic compound (NMOC) emissions from the landfill. When the estimated annual NMOC emission rate reaches 50 Mg per year, the landfill owner or operator must install a gas collection system and route the gas to a control device, for example a flare, an energy recovery device such as a gas turbine or internal combustion engine), or a gas recovery system. Once the gas collection system is operating, the owner or operator must monitor the landfill surface quarterly for organic compound leaks.

Proposed §113.2061(b) provides that gas collection and control systems that were approved by the commission for installation at a landfill in compliance with 30 TAC §§115.152-115.159, concerning Municipal Solid Waste Landfills, are in compliance with the proposed design standards with no further review. This provision is included to prevent landfill owners/operators in the Dallas/Fort Worth and El Paso ozone nonattainment areas from being subjected to the requirements of two different state rules.

The commission seeks comment on other provisions which may be necessary to coordinate the transition from regulation under 30 TAC §§115.152-115.159 to regulation under the proposed rule.

Proposed new §113.2067, concerning Exemptions, provides the criteria by which operators of an MSW landfill or class of landfills may apply for an exemption to the proposed rule on a case-by-case basis. These criteria are consistent with the federal regulations (40 CFR Part 60, §60.24(f)), which list the criteria under which exemptions will be considered by the EPA. The commission seeks comment on what landfills or classes of landfills might be candidates for exemptions under this proposed section.

Proposed new §113.2069, concerning Compliance Schedule, provides the schedule for the initial reports that are required by the rule. Owners and operators of all affected landfills must file an initial design capacity report within 90 days of the date that the commission publishes notification in the *Texas Register* that EPA has approved this rule. By the same date, owners and operators of those affected landfills with a design capacity greater than or equal to 2.5 M Mg or 2.5 M cubic meters must file an initial NMOC emission rate report. All other compliance times are specified in the referenced federal rule relative to the filing deadline for these two reports.

#### FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the proposed rules are in effect, there will be fiscal cost implications for state and local governments. Affected landfill owners and/or operators would have to spend approximately \$10,000 to \$12,000 per acre to implement the requirements of the proposed rules. Any cost beyond the five-year

period would be limited to ongoing operation and maintenance of the gas collection and control systems. The cost effectiveness of these rules is estimated at \$1,100 per ton of NMOC reduced. Based on EPA's estimate, the annual cost of waste acceptance may increase by \$2.50 to \$5.00 per year per household. However, landfills that elect to use energy recovery systems may be able to significantly offset the cost of implementing the proposed rules. EPA also estimates that 5% of the total number of landfills nationwide would be required to implement controls.

#### PUBLIC BENEFIT

Mr. Minick also has determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcement of and compliance with the proposed rules will be satisfaction of a federal requirement as well as methane and NMOC emission reductions which are beneficial for attaining the ozone standard in ozone nonattainment areas, controlling odor nuisance, and reducing the danger of fire or explosion hazards. There are no fiscal implications for persons or small businesses affected by the proposed rules.

#### REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed sections as required by regulatory analysis provisions of Texas Government Code (the Code), §2001.0225, and has determined that the rulemaking is not subject to §2001.0225. While this action is a major environmental rule which will cause estimated expenditures of up to \$12,000 per acre for affected landfills it does not meet any of the applicability requirements of §2001.0225(a). This proposal does not exceed standards or requirements set by either federal or state law and is being proposed under requirements of §111(d) of the FCAA.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that assessment. The specific purpose of the rules is to control air contaminants from MSW landfills. The rules will substantially advance this specific purpose by requiring some MSW landfills to install gas collection and control systems and monitor surface emissions. Promulgation and enforcement of these rules could burden private real property which is the subject of the rules.

These rules fulfill a requirement of federal law and are proposed to prevent public nuisances and do not require a full takings evaluation.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that the proposed rulemaking 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's rules at 30 TAC Chapter 281, Subchapter B, Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this proposed action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council. For the proposed action in 30 TAC §§113.2060, 113.2061, 113.2067, and 113.2069, the commission has determined that the rules are consistent with the applicable CMP goals and policies. The purpose of

30 TAC §§113.2060, 113.2061, 113.2067, and 113.2069 is to control air contaminants from MSW landfills. The sections are in compliance with the regulations adopted under Title 40, Code of Federal Regulations adopted under the 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 resource areas (CNRAs) and promote the public health, safety and welfare. Interested persons may submit comments on the consistency of the proposed rule with the CMP during the public comment period.

#### PUBLIC HEARING

Public hearings on this proposal will be held in Irving on May 29, 1998 at 2:00 p.m. at the City of Irving Central Library Auditorium, 801 West Irving Boulevard; in Austin on June 1, 1998 at 2:00 p.m. at the Texas Natural Resource Conservation Commission, Building F, Room 5108, 12100 Park 35 Circle; and in Houston on June 4, 1998 at 7:00 p.m. at the City of Houston Pollution Control Building Auditorium. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearings; however, a staff member will be available to discuss the proposal one hour prior to each hearing and will answer questions before and after the hearings.

#### SUBMITTAL OF COMMENTS

Written comments may be mailed to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96135-113-AI. Comments must be received by 5:00 p.m., June 8, 1998. For further information or questions concerning this proposal, contact David C. Schanbacher of the

Office of Air Quality, (512) 239-1228, Susan Janek of the Office of Waste Management, (512) 239-6784, or Beecher Cameron of the Office of Policy and Regulatory Development, (512) 239-1495.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

#### STATUTORY AUTHORITY

The new subchapter and sections are proposed under the Texas Clean Air Act (TCAA), Texas Health and Safety Code, §382.011, which provides the commission authority to control the quality of the state's air; §382.012, which gives the commission authority to develop a comprehensive plan for control of the state's air; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and to specify control methods when required by federal law.

The proposed new subchapter and sections implement the FCAA, §111(d) and TCAA §§382.011, 382.012, and 382.017.

**SUBCHAPTER D: DESIGNATED FACILITIES AND POLLUTANTS**

**DIVISION 1. MUNICIPAL SOLID WASTE LANDFILLS**

**§113.2060. Definitions.**

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Natural Resource Conservation Commission (commission), the terms used in this division have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined in the TCAA, and in §101.1 of this title (relating to Definitions), the following words and terms, when used in this division shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Construction** - Fabrication, erection, or installation of an affected municipal solid waste landfill (MSWLF).

(2) **Existing municipal solid waste landfill** - An MSWLF meeting the following conditions:

(A) The MSWLF has accepted waste at any time since October 9, 1993, or has additional design capacity available for future waste deposition, regardless of whether that MSWLF is currently open or closed; and

(B) Construction, reconstruction, or modification of the MSWLF was commenced before May 30, 1991 (i.e., the MSWLF is not subject to the requirements of 40 Code of Federal Regulations (CFR) Part 60, Subpart WWW).

(3) **Fixed capital cost** - The capital needed to provide all the depreciable components.

(4) **Modification** - Any physical change in, or change in the method of operation of, an existing MSWLF which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that MSWLF or which results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted. For MSWLFs, the only physical or operational change that results in increased landfill emissions is an increase in the landfill design capacity. Design capacity of a landfill is increased only with the addition of new disposal areas. New disposal areas can result by increasing the depth of refuse deposition, increasing refuse compaction, or by constructing additional disposal cells. Physical or operational changes made to an existing MSWLF solely to comply with this subchapter are not considered a modification and would not subject an existing MSWLF to the requirements of 40 CFR Part 60, Subpart WWW.

(5) **Reconstruction** - The replacement of components of an existing MSWLF to such an extent that the fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable entirely new MSWLF, and it is technologically and economically feasible to meet the applicable standards set forth in this division. Physical or operational changes made to an existing MSWLF solely to comply with this subchapter are not considered

reconstruction and would not subject an existing MSWLF to the requirements of 40 CFR Part 60, Subpart WWW.

**§113.2061. Standards for Air Emissions.**

(a) An owner or operator of an existing municipal solid waste landfill (MSWLF) shall comply with all provisions specified in 40 Code of Federal Regulations (CFR) Part 60, §§60.751 through 60.759 as promulgated on March 12, 1996, and amended on August 17, 1998. For purposes of this rule, the term “Administrator” wherever it appears in 40 CFR Part 60, §§60.751 through 60.759 shall refer to the commission.

(b) Gas collection and control systems approved by the commission and installed at an MSWLF in compliance with §115.152 of this title (relating to Control Requirements) satisfy the gas collection and control system design requirements of this section.

**§113.2067. Exemptions.**

A municipal solid waste landfill (MSWLF) may apply for less stringent emission standards or longer compliance schedules than those otherwise required by this division, provided that the owner or operator demonstrates to the executive director the following:

(1) unreasonable cost of control resulting from MSWLF age, location, or basic MSWLF design;

(2) physical impossibility of installing necessary control equipment; or

(3) other factors specific to the MSWLF that make application of a less stringent standard or final compliance time significantly more reasonable.

**§113. 2069. Compliance Schedule.**

(a) An owner or operator subject to the requirements of this undesignated head shall submit the initial design capacity report in accordance with 40 Code of Federal Regulations (CFR) Part 60, §60.757(a)(2) to the executive director within 90 days from the date the commission publishes notification in the *Texas Register* that the United States Environmental Protection Agency (EPA) has approved this rule.

(b) An owner or operator of a municipal solid waste landfill with a design capacity equal to or greater than 2.5 million megagrams or 2.5 million cubic meters and subject to the requirements of this division shall also submit the initial non-methane organic compound emission rate report in accordance with 40 CFR §60.757(b)(2) to the executive director within 90 days from the date the commission publishes notification in the *Texas Register* that EPA has approved this rule.