

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §330.4, and new §330.26, concerning municipal solid waste management.

EXPLANATION OF PROPOSED RULE

The purpose of these rules is to establish additional general rules for the storage and disposal of litter generated and disposed of on an individual's property. The statutory basis for the rules is found in House Bill (HB) 717, 75th Legislature, which amended the Texas Health and Safety Code, Chapter 365, the Texas Litter Abatement Act, §365.011 and §365.012; Senate Bill (SB) 1782, 75th Legislature, which amended the Texas Health and Safety Code, Chapter 361, the Solid Waste Disposal Act, §361.116; and the Texas Health and Safety Code, Chapter 361, the Solid Waste Disposal Act, §361.011. HB 717 directs the commission to establish rules to regulate temporary storage for future disposal of litter or other solid waste by a person on land owned by the person or the person's agent. These proposed rules establish a permit exemption following the directive from HB 717 that a landowner may dispose of litter or other solid waste on his own land without commission authorization if the litter or other solid waste is generated and disposed of on land the individual owns, and the disposal is not for commercial purposes. The term "commercial purpose" is defined in Texas Health and Safety Code, Chapter 365, the Texas Litter Abatement Act, §365.011, and will be included in a future rule writing action. Commercial purpose as quoted from the Texas Litter Abatement Act means the purpose of economic gain. The permit exemption for disposal of litter or other waste by an individual has

an added standard of 2000 pounds per individual per year. The 2000 pound per year standard is taken from an existing standard established in existing §330.55(a)(4) which establishes the general amount of waste generated by an individual as five pounds per day. Additionally, these rules follow direction from SB 1782 by adding a permit exemption to new §330.4(u) regarding the disposal of animal carcasses for roadway maintenance. New §330.26 establishes rules regulating the temporary storage for future disposal of litter or other solid waste as required by HB 717. New §330.26 simply requires waste from this source to be stored in the normal manner currently established in existing §330.22 for similar wastes.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections as proposed are in effect there will be fiscal implications as a result of administration and enforcement of the sections. The effect on state government will be a reduction in the costs of processing municipal solid waste permits or registrations. These savings are prospective and cannot be determined at this time, but are not anticipated to reflect reductions in operating costs. Generally, there are no significant fiscal implications anticipated for state or local governments as a result of enforcement or administration of the section.

PUBLIC BENEFIT

Mr. Minick also has determined that for the first five-year period the sections as proposed are in

effect the public benefit anticipated as the result of enforcement of and compliance with the sections will be more cost-effective regulation and control of litter and solid waste.

The effect of the sections as proposed will be to reduce the potential costs of obtaining authorization to operate extremely small facilities for solid waste disposal. The additional costs of preparation of an application have not been estimated, but these cost savings could be even greater. There are no economic costs identified for any person subject to the sections as proposed.

REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and has 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 the act, and it does not meet any of the four applicability requirements listed in §2001.0225(a).

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 proposed rules is to regulate activities associated with temporary storage and future disposal of litter and other solid waste by a person on land owned by that person. The rules will establish that agency authorization in the form of a registration or the previously

required permit are not required for the disposal of litter or other solid waste generated by an individual and disposed of by that individual on land owned by that individual. The rules will provide the specific standards for storage of such waste. The proposed rules are necessary to advance the agency's mission of providing adequate public health and safety relative to the management of municipal solid waste. The proposed rules will establish exemptions from authorization standards and will establish storage standards which currently do not exist under Chapter 330. The proposed rules will provide significant clarification regarding the procedures and criteria to be used by the TNRCC and the regulated community in the requirements for the review and approval of permit applications for regulated activities under this chapter. The commission has prepared a Takings Impact Assessment for this rule according to Texas Government Code, §2007.043, and has determined that this rule will not create a burden on private real property. The Texas Health and Safety Code, Chapter 365, the Texas Litter Abatement Act, §365.012, states that a landowner may only dispose of litter or other solid waste on his own land if the litter is or waste is generated on land the individual owns, and the disposal is not for or resulting from a commercial purpose. New §330.26 establishes rules regulating the temporary storage for future disposal of litter or other solid waste as required by HB 717. Additionally, these rules follow direction from SB 1782 by adding a permit exemption regarding the disposal of animal carcasses for roadway maintenance. Through the creation of permit exemptions for this kind of disposal, the commission is not creating a regulatory burden, but is simplifying compliance with an statutory requirement.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking action is 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.), the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning consistency with the Texas Coastal Management Program. As required by 31 TAC§505.11(b)(4) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, agency rules regarding solid waste management must be consistent with the goals and policies of the CMP to protect the coastal area. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rule is consistent with CMP goals and policies, in that the permit exemption will have a negligible impact upon the coastal area.

PUBLIC HEARING.

A public hearing on this proposal will be held on March 26, 1998 at 2:00 p.m. in Room 2210 of Texas Natural Resource Conservation Commission (TNRCC) Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral and/or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur 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.

SUBMITTAL OF COMMENTS

Written comments regarding this proposal may be mailed to Bettie Bell, TNRCC 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 97153-330-WS. Comments must be received by 5:00 p.m., April 5, 1998. For further information, please contact Wayne Lee, Waste Policy and Regulations Division, (512) 239-6815.

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

STATUTORY AUTHORITY

The sections are proposed under the authority of the Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and under House Bill 717, as passed by the 75th Legislature amending the Texas Litter Abatement Act, §365.012, Texas Health and Safety Code, Chapter 365; Senate Bill 1782, as passed by the 75th Legislature, which amended the Texas Health and Safety Code, Chapter 361, the Solid Waste Disposal Act, §361.116; and pursuant to the Texas Solid Waste Disposal Act, Texas Health and Safety Code §361.024, which provides the commission with the authority to regulate municipal

solid waste and adopt rules as necessary to regulate the operation, management, and control of solid waste under its jurisdiction.

The proposed amendments and new section implement Texas Health and Safety Code, §365.012, and §361.116.

SUBCHAPTER A : GENERAL INFORMATION

§ 330.4

§330.4. Permit Required.

(a) - (u) (No change.)

(v) A permit, registration, or other authorization is not required for the disposal of litter or other solid waste, generated by an individual, on that individual's own land where:

(1) the litter or waste is generated on land the individual owns;

(2) the litter or waste is not generated as a result of an activity related to a commercial purpose;

(3) the disposal occurs on land the individual owns;

(4) the disposal is not for a commercial purpose;

(5) the waste disposed of is not hazardous waste or industrial waste;

(6) the volume of waste disposed of by the individual does not exceed 2,000 pounds per year;

(7) the waste disposal method complies with §§111.201 - 111.221 of this title (relating to Outdoor Burning); and

(8) the waste disposal method does not contribute to a nuisance and does not endanger the public health or the environment. Exceeding 2,000 pounds per individual's residence per year is considered to be a nuisance.

(w) A permit or registration is not required for the disposal of animal carcasses from government roadway maintenance where:

(1) either of the following:

(A) the animals were killed on county or municipal roadways and the carcasses are buried on property owned by the entity that is responsible for road maintenance; or

(B) the animals were killed on state highway right-of-way and the

carcasses are disposed of by the Texas Department of Transportation by burying the carcasses on state highway right-of-way; and

(2) the waste disposal method does not contribute to a nuisance and does not endanger the public health or the environment; and

(3) the animal carcasses are covered with at least two feet of soil in accordance with § 330.136(b)(2) of this title (relating to Disposal of Special Wastes).

SUBCHAPTER B : MUNICIPAL SOLID WASTE STORAGE

§330.26

STATUTORY AUTHORITY

The section is proposed under the authority of the Texas Water Code, § 5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and under House Bill 717, as passed by the 75th Legislature amending the Texas Litter Abatement Act, § 365.012, Texas Health and Safety Code, Chapter 365; Senate Bill 1782, as passed by the 75th Legislature, which amended the Texas Health and Safety Code, Chapter 361, the Solid Waste Disposal Act, §361.116; and pursuant to the Texas Solid Waste Disposal Act, Texas Health and Safety Code §361.024, which provides the commission with the authority to regulate municipal solid waste and adopt rules as necessary to regulate the operation, management, and control of solid waste under its jurisdiction.

The proposed amendments and new section implement Texas Health and Safety Code, §365.012, and §361.116.

§330.26. Storage of Litter and Other Waste

Litter and other waste temporarily stored on an individual's own land for future disposal shall

be maintained in a manner that complies with §330.22 of this title (relating to Storage Requirements), §330.23 of this title (relating to Approved Containers), and §§111.201 - 111.221 of this title (relating to Outdoor Burning).