

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §330.2, concerning Definitions.

EXPLANATION OF PROPOSED RULE

The purpose of the proposed amendment is to implement legislative changes to Health and Safety Code §361.560(3) regarding the definition of medical waste. House Bill 1644, 74th Legislature (1995), excluded from the definition of medical waste that medical waste produced on farmland and ranchland as defined in Agriculture Code §252.001(6); and House Bill 956, 75th Legislature (1997), excluded from the definition those artificial, nonhuman materials removed from a patient and requested by the patient, including but not limited to orthopedic devices and breast implants.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the section as proposed is in effect, there are no significant fiscal implications anticipated for state and local governments as a result of administration or enforcement of the section.

PUBLIC BENEFIT

Mr. Minick has also determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcement of and compliance with the section will be more cost-effective management and regulation of medical wastes, the reduction of regulatory and waste management costs for certain agricultural operations, and improvement in the ability of a person to retain certain artificial, nonhuman materials surgically removed. The proposed amendment will

provide a potential cost savings for operators of farms and ranches that may generate wastes that are potentially subject to regulation as medical waste under the current definition. The proposed exemption of these wastes from regulation as medical waste will reduce the costs of handling, storage, treatment, transportation, and disposal. The amount of waste generated by facilities subject to the proposed provision has not been determined, but total cost savings are not estimated to have significant implications for most operators or for commercial waste management operations. Many of the affected facilities are presumed to be small businesses. Cost savings for small businesses will be directly proportional to the amounts of waste generated subject to this rule. There are no economic costs anticipated for any individual required to comply with the section as proposed.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed 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 this rule pursuant to Texas Government Code Annotated Section 2007.043. The following is a summary of that assessment. The specific purpose of the proposal is to amend the definition of medical waste to conform with legislative changes to the definition. The rule amendment will substantially advance the specific purpose by incorporating the legislative changes into the definition of medical waste. Promulgation and enforcement of this rule

amendment will not affect or create a burden on private real property because the amendment is only to revise the definition of medical waste by providing some legislatively-mandated exclusions. The exclusions will make the existing rule less stringent primarily by reducing the management standards for medical waste produced on certain farmlands and ranchlands. There is no other identifiable exemption in Senate Bill 14 that specifically applies.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

Staff has reviewed the proposed rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program (CMP), nor will affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the CMP.

SUBMITTAL OF COMMENTS

Written comments may be mailed to Heather Evans, 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 97162-330-WS. Comments must be received by 5:00 p.m., January 5, 1998. For further information concerning this proposal, please contact Hector Mendieta, Waste Policy and Regulations Division, (512) 239-6694.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code §5.103 which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas; and the Solid Waste Disposal Act (Act), Texas Health and Safety Code, §361.024, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the Act, and §361.560(3), which is the amended definition of medical waste.

The proposed amendment implements Health and Safety Code Chapter 361.

SUBCHAPTER A: GENERAL INFORMATION

§330.2. Definitions

Unless otherwise noted, all terms contained in this section are defined by their plain meaning. This section contains definitions for terms that appear throughout this chapter. Additional definitions may appear in the specific section to which they apply. As used in this chapter, words in the masculine gender also include the feminine and neuter genders, words in the feminine gender also include the masculine and neuter genders; words in the singular include the plural and words in the plural include the singular. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Medical waste - Waste generated by health-care-related facilities and associated with health-care activities, not including garbage or rubbish generated from offices, kitchens, or other non-health-care activities. The term includes special waste from health care-related facilities which is comprised of animal waste, bulk blood and blood products, microbiological waste, pathological waste, and sharps as those terms are defined in 25 TAC §1.132 (relating to Definition, Treatment, and Disposition of Special Waste from Health-Care Related Facilities). The term does not include medical waste produced on farmland and ranchland as defined in Agriculture Code §252.001(6) (relating to Definitions - Farmland or ranchland), nor does the term include artificial, nonhuman materials removed from a patient and requested by the patient, including but not limited to orthopedic devices and breast implants.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 19, 1997.