

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §330.562, Definitions of Terms and Abbreviations; §330.563, Regional and Local Plan Requirements; and §330.566, Procedures for Regional and Local Plan Submission and Approval. The commission proposes these revisions in response to requirements of Senate Bill (SB) 1447, 76th Legislature, 1999, which added new requirements for identifying former municipal solid waste landfill units and notifying the owners of the overlaying property. SB 1447 amended the Texas Health and Safety Code (THSC), §363.064(a)(10), concerning inventories of closed municipal solid waste landfill units to be included in regional and local solid waste management plans. The proposed rule amendments reflect legislative clarification of certain procedures and responsibilities related to the development of the inventories and making them available for public inspection.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

In January 1996, the commission adopted amendments to Chapter 330, Subchapter O, to incorporate requirements mandated by House Bill (HB) 2537, 73rd Legislature, 1993, that all regional and local solid waste management plans include an inventory of existing and closed landfill units. In accordance with HB 2537, the inventory required that the location of the landfill units be provided. SB 1447 required that the exact boundaries of each former landfill unit or, if the exact boundaries are not known, the best approximation of each unit's boundaries, and a map showing the approximate boundaries of the former landfill unit, if the exact boundaries are not known, be provided. SB 1447 also established requirements for notification of the contents of the inventory to the commission, local governments, and the public.

SECTION BY SECTION DESCRIPTION

Section 330.562 is proposed to be amended to include a more detailed definition of "closed municipal solid waste landfill unit," in order to specify the types of solid waste disposal sites to be included in the inventories.

Section 330.563 is proposed to be amended to distinguish between the regional and local solid waste management plan inventory requirements for landfill units for which exact boundaries are known and for landfill units for which exact boundaries are not known. The amendments will provide that local plans may substitute the inventory information contained in the regional plan. The amendments will also provide that the requirement to include the inventory information in the local plan will not apply until that information has been incorporated into the applicable regional plan and approved by the commissioners.

Section 330.566 is proposed to be amended to more appropriately name the section and to add procedures for making the closed landfill inventory available for public inspection.

FISCAL NOTE

Jeff Grymkoski, Director, Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments are in effect, there will be no significant fiscal implications for units of state and local government as a result of administration or enforcement of the proposed amendments. The proposed amendments would implement certain provisions of SB 1447.

The proposed rules will require councils of governments (COGs) and local governments to include in a regional or local solid waste plan an inventory of the exact boundaries of each former landfill unit or, if the exact boundaries are not known, the best approximation of each unit's boundaries. For each landfill unit for which the exact boundaries are not known, the inventories shall include a map showing the approximate boundaries of the former landfill unit. To the maximum extent practical, such inventories shall list the current owner of the land on which the former landfill units were located.

The rules would require each COG to provide a copy of the inventory of closed municipal solid waste landfill units to the chief planning official of each municipality and county in which a unit is located. COGs and chief planning officials would also be required to make the inventory available for public inspection.

PUBLIC BENEFIT

Mr. Grymkoski has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be improved public access to the exact boundaries or the best approximation of boundaries of former landfill units located in Texas.

No adverse economic costs to any person or business are anticipated as a result of implementing the proposed rules. The rules will require COGs and local governments to include in regional or local solid waste plans an inventory of the exact boundaries of each former landfill unit, or if the exact boundaries are not known, the best approximation of each unit's boundaries. The rules would require that this

information be made available for public inspection.

SMALL BUSINESS AND MICRO-BUSINESS ANALYSES

No adverse economic effects are anticipated to any small businesses or micro-businesses as a result of implementing the proposed rules. The rules will require COGs and local governments to include in regional or local solid waste plans an inventory of the exact boundaries of each former landfill unit, or if the exact boundaries are not known, the best approximation of each unit's boundaries. The rules would require that this information be made available for public inspection.

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 that statute. "Major environmental rule" means 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 proposed rules are not anticipated to 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 proposed amendments do not add any additional regulatory requirements not already required by state or federal law. In addition, the proposed amendments are not a "major environmental rule" because they do not meet the applicability requirements of a "major environmental rule." The

proposed amendments do not exceed a standard set by federal law, exceed an express requirement of state law, nor exceed a requirement of a delegation agreement. This rulemaking implements provisions of SB 1447. The commission seeks public comment on the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rule amendments pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule amendments is to make commission rules conform with the provisions in SB 1447 which clarify the responsibilities of COGs and local governments with respect to documenting and reporting the location of closed municipal solid waste landfill units. The original legislation and implementing rules required the reporting of only the location of a closed landfill to the landowner and the county clerk, but the proposed amendments will require that the exact boundaries, or approximate boundaries with a supporting map of the former landfill be reported and recorded in the closed landfill inventory as required by SB 1447.

The proposed rule amendments will substantially advance the specific purpose by incorporating the new requirements specified by SB 1447. Promulgation and enforcement of these amendments will not burden private real property which is the subject of the amendments because the actions that are required by the amendments are directed at regional and local planning agencies and not toward private real property owners. Therefore, this proposal will not constitute a takings under the Texas Government Code, Chapter 2007.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the proposed rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will the rules affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rules are not subject to the Coastal Management Program.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 1999-048-330-WS. Comments must be received by 5:00 p.m., April 24, 2000. For further information, please contact Hector Mendieta, Policy and Regulations Division, telephone number (512) 239-6694.

STATUTORY AUTHORITY

The amendments are proposed under the Solid Waste Disposal Act, THSC, §361.011 and §361.24, which authorize the commission to regulate nonhazardous municipal solid waste and to adopt rules consistent with the general intent and purposes of the Act; and the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act, THSC, §363.061 and §363.064, which require the commission to adopt rules relating to regional and local solid waste management plans and specify the content of the plans.

The proposed amendments implement THSC, Chapters 361 and 363.

**SUBCHAPTER O: REGIONAL AND LOCAL SOLID WASTE MANAGEMENT PLANNING
AND FINANCIAL ASSISTANCE GENERAL PROVISIONS**

§§330.562, 330.563, 330.566

§330.562. Definitions of Terms and Abbreviations.

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

(1)-(2) (No change.)

(3) Closed Municipal Solid Waste Landfill (CMSWLF) Unit--A discrete area of land or an excavation that has received only municipal solid waste or municipal solid waste combined with other solid wastes, including but not limited to construction/demolition waste, commercial solid waste, nonhazardous sludge, conditionally-exempt small-quantity generator hazardous waste, and industrial solid waste, and that is not a land application unit, surface impoundment, injection well, or waste pile as those terms are defined by 40 Code of Federal Regulations §257.2 [CMSWLF--Closed municipal solid waste landfill].

(4)-(26) (No change.)

§330.563. Regional and Local Plan Requirements.

(a) Regional plans. A regional plan identifies the problems, goals, objectives, and recommended actions for solid waste management over a long-range period for the entire planning region.

(1)-(2) (No change.)

(3) Plan content. A regional plan shall be the result of a planning process related to the proper management of solid waste in the planning region. The process shall include identification of problems and collection and evaluation of the data necessary to provide a written public statement of goals and objectives and actions recommended to accomplish those goals and objectives. The regional plan shall include:

(A)-(N) (No change.)

(O) an inventory of closed municipal solid waste landfill units located within the planning region. The inventories shall include the exact boundaries of each former landfill unit or, if the extent of the boundaries are not known, the best approximation of each unit's boundaries. For each landfill unit for which the exact boundaries are not known, the inventories shall include a map showing the approximate boundaries of the former landfill unit. To the maximum extent practicable, such inventories shall list the current owners of the land on which the former landfill units were located

and the current use of the land [municipal solid waste landfill units, including landfill units no longer in operation. To the extent possible, such inventories shall list the location of such units, the current owners of the land on which the former landfill units were located, and the current use of the land. The executive director may conduct inventories, in coordination with the regional planning commissions, on a statewide basis and provide such inventories to the regional planning commissions to incorporate into their regional plans].

(4) (No change.)

(b) Local plans. A local plan addresses specific short and long-range problems and actions related to solid waste management within the jurisdiction of one or more local governments and may be developed regardless of whether a regional plan has been developed which will affect the local planning area.

(1)-(2) (No change.)

(3) Plan content. A local plan shall be the result of a planning process that is related to the proper management of solid waste in the local planning area. The process shall include identification of problems and collection and evaluation of the data necessary to provide a written public statement of goals and objectives and the actions recommended to accomplish those goals and objectives. The local plan shall include:

(A)-(K) (No change.)

(L) an inventory of closed municipal solid waste landfill units located within the local planning area. The inventories shall include the exact boundaries of each former landfill unit or, if the exact boundaries are not known, the best approximation of each unit's boundaries. For each landfill unit for which the exact boundaries are not known, the inventories shall include a map showing the approximate boundaries of the former landfill unit. To the maximum extent practicable, such inventories shall list the current owners of the land on which the former landfill units were located and the current use of the land. For this requirement, local plans may substitute the applicable parts of the regional inventory required under subsection (a)(3)(O) of this section. This requirement does not apply until a regional inventory is incorporated into the applicable regional plan(s) and approved by the commissioners [municipal solid waste landfill units, including landfill units no longer in operation. To the extent possible, such inventories shall list the location of such units, the current owners of the land on which the former landfill units were located, and the current use of the land. For this requirement, local plans may substitute the inventory of municipal solid waste landfill units required by subsection (a)(3)(O) of this section].

(4) (No change.)

§330.566. Procedures for Regional and Local Plan Submission, Approval, and Distribution [and Approval].

(a)-(h) (No change.)

(i) Upon approval of a regional plan by the commissioners, the regional planning commission shall provide a copy of the adopted plan, including the inventory of closed municipal solid waste landfill units, to the chief planning official of each municipality and county within the planning region. The regional planning commission and the chief planning officials shall make the adopted regional plan available for public inspection.