

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** November 20, 2015

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: Brent Wade, Deputy Director
Office of Waste

Docket No.: 2015-1448-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 326, Medical Waste Management
Chapter 330, Municipal Solid Waste
Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste
HB 2244: Medical Waste
Rule Project No. 2015-019-326-WS

Background and reason(s) for the rulemaking:

House Bill (HB) 2244 was passed by the 84th Texas Legislature and became effective June 10, 2015. The bill added Texas Health and Safety Code (THSC), §361.0905 to the THSC, Regulation of Medical Waste, requiring the Texas Commission on Environmental Quality (commission or TCEQ) to require a permit, registration, or other authorization for the handling, storage, disposal, and transportation of medical waste. Title 30 Texas Administrative Code (TAC) Chapter 330 implements THSC, Chapter 361, which requires the commission to safeguard the health, welfare, and physical property of the people and to protect the environment by controlling the management of solid waste, including accounting for types of solid wastes such as medical waste. The commission is required to adopt rules implementing THSC, §361.0905 by June 1, 2016.

Scope of the rulemaking:

This rulemaking would amend and repeal portions of 30 TAC Chapters 330 and 335 related to the management of medical waste and create a new 30 TAC Chapter 326 for the handling, transportation, storage, and disposal of medical waste. The legislatively mandated amendments also include making operational changes that apply to medical waste facilities such as buffer zones, and storage in transport vehicles at a facility.

A.) Summary of what the rulemaking will do:

Chapter 330 would be amended to repeal Subchapter Y and transfer contents relating to medical waste management to proposed new Chapter 326. Sections within Chapters 330 and 335 that reference Chapter 330, Subchapter Y would also be revised to reference proposed new Chapter 326.

Chapter 326 would organize the rules from Chapter 330, Subchapter Y by level of authorization. The new chapter would be outlined as follows:

- Subchapter A, General Information, would establish the purpose and applicability, define terms, establish general prohibitions and specify other authorizations

Re: Docket No. 2015-1448-RUL

required by other TCEQ programs such as air permitting and water quality permitting.

- Subchapter B, Packaging, Labeling and Shipping Requirements, would establish medical waste labeling and packaging for transport to a treatment or disposal facility. Recordkeeping requirements and provisions for both generators and transporters would also be established.
- Subchapter C, Exempt Medical Waste Operations, would establish exempt facilities from medical waste authorizations. These facilities would be all generators and those small quantity generators that self-transport.
- Subchapter D, Operations Requiring a Notification, would establish the process and requirements for medical waste operations to request a notification authorization. These facilities are on-site treatment facilities and medical waste collection stations.
- Subchapter E, Operations Requiring a Registration by Rule, would establish the process and requirements for transporters and mobile on-site treatment units to operate under a Registration by Rule.
- Subchapter F, Operations Requiring a Registration, would establish registration requirements for facilities that store or process untreated medical waste that is received from off-site sources.
- Subchapter G, Fees and Reporting, would establish fees for solid waste processing for disposal within the state and registered transporters. It would also establish reporting requirements for stored and processed waste.

B.) Scope required by federal regulations or state statutes:

HB 2244 passed by the 84th Texas Legislature required revision to commission rules by June 1, 2016. The commission has the powers and duties prescribed by THSC, Chapter 361, Subchapter C, relating to medical waste regulation and all other powers necessary or convenient to carry out responsibilities under that chapter. Rules adopted to regulate the management of municipal solid waste would apply in the same manner to medical waste only to the extent that the rules address:

- (1) permit and registration requirements;
- (2) minor modification for permits and registrations;
- (3) the reconciliations of conflicting site operation plan requirements;
- (4) waste acceptance and analysis;
- (5) facility-generated waste, including wastewater and sludge;
- (6) contaminated water management;
- (7) on-site storage areas for source-separated or recyclable materials;

Re: Docket No. 2015-1448-RUL

- (8) waste storage;
- (9) closure requirements;
- (10) recordkeeping and reporting requirements;
- (11) fire protection;
- (12) access control;
- (13) unloading waste;
- (14) spill prevention and control;
- (15) operating hours;
- (16) facility signage;
- (17) control of litter, including windblown material;
- (18) noise pollution and visual screening;
- (19) capacity overloading and mechanical breakdown;
- (20) sanitation, including employee sanitation facilities;
- (21) ventilation and air pollution control; and
- (22) facility health and safety plans.

In matters relating to medical waste regulation, the commission shall consider water pollution control and water quality aspects, air pollution control and ambient air quality aspects, and the protection of human health and safety.

C.) Additional staff recommendations that are not required by federal rule or state statute:

None.

Statutory authority:

HB 2244

THSC, §361.0905, Regulation of Medical Waste

Effect on the:

A.) Regulated community:

The rulemaking would reduce the minimum buffer zone required between processing equipment or storage areas and the facility boundary. The regulated community would have a period of two years after the effective date of this rulemaking to revise current authorization without public notice to be in compliance with the new rules.

B.) Public:

None.

C.) Agency programs:

None.

Re: Docket No. 2015-1448-RUL

Stakeholder meetings:

Stakeholder meetings were held August 18, 2015 and September 21, 2015. Stakeholders generally supported the new Chapter 326 and realized the benefit to the regulated community.

Potential controversial concerns and legislative interest:

None.

Will this rulemaking affect any current policies or require development of new policies?

No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

Failure to adopt amendments to TCEQ rules would result in the commission being out of compliance with THSC, §361.0905.

Key points in the proposal rulemaking schedule

Anticipated proposal date: December 9, 2015

Anticipated *Texas Register* publication date: December 25, 2015

Anticipated public hearing date: January 25, 2016

Anticipated public comment period: December 25, 2015 - February 8, 2016

Anticipated adoption date: April 27, 2016

Agency contacts:

Mario Perez, Project Manager, Waste Permits Division, (512) 239-6681

Steve Shepherd, Staff Attorney, (512) 239-0464

Derek Baxter, Texas Register Coordinator, (512) 239-2613

Attachments

HB 2244

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Stephen Tatum
Jim Rizk
Office of General Counsel
Mario Perez
Derek Baxter