

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to 30 Texas Administrative Code (TAC) §330.647.

Amended 30 TAC §330.647 is adopted without changes to the proposed text as published in the February 24, 2023, issue of the *Texas Register* (48 TexReg 1020) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

In Texas, 24 regional planning commissions, also known as councils of governments (COGs), have the primary responsibility under Texas Health and Safety Code (THSC), §363.0615 for regional solid waste management planning. All 24 COGs submitted regional solid waste management plans to TCEQ, and TCEQ reviewed the plans in accordance with THSC, Chapter 363, Subchapter D. This rulemaking adopts the approved regional solid waste management plans in compliance with THSC, §363.062(f), which states the commission will adopt the plans by rule. THSC, §363.062 and 30 TAC §330.641 describe the procedures for submission and approval of the regional solid waste management plans.

These new regional solid waste management plans will replace existing regional plans developed in 2002. The period for the existing regional solid waste management plans is from 2002 to 2022. All 24 COGs would continue to reference the goals and strategies in their existing plans in implementation activities and projects until the proposed plans are fully adopted.

The regional solid waste management plans include goals and strategies for implementing and promoting proper waste disposal management, waste diversion from landfills, recycling, and waste minimization, as well as initiatives for reducing illegal dumping of waste in each planning

region. The regional solid waste management plans also describe the regions' current and anticipated activities as required by 30 TAC §330.643(a)(3). Plan requirements include documenting and estimating future growth for the region's population and commercial and industrial base; estimating future solid waste amounts by type; descriptions of current and planned waste management activities; and assessment and adequacy of existing waste management facilities, practices, and programs. The regional solid waste management plans also require assessment of current and future efforts of source reduction and waste minimization activities, as well as reuse and recycling of waste.

The regional solid waste management plans were developed by each COG using the most recent population, business, industry, and solid waste management data available from the State of Texas, universities, and financial and business entities. Local stakeholders were also surveyed to solicit feedback and ideas on goals and strategies.

Notice of the plans' availability for public review was published in local newspapers and/or media pages, and public comment meetings were scheduled and held in all 24 COG areas. The final regional solid waste management plans were approved by each COG's Solid Waste Advisory Committee and Board of Directors.

Section by Section Discussion

§330.647, Approved Regional and Local Solid Waste Management Plans

The commission adopts amended §330.647(a) to specify that subsection (d) contains the adopted regional solid waste management plans.

The commission adopts new §330.647(d)(1)-(24) to incorporate the approved regional solid

waste management plans by reference.

Final Regulatory Impact Determination

The commission reviewed the rulemaking adoption under the regulatory analysis requirements of Texas Government Code, §2001.0225, and 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 statute. A "major environmental rule" is a rule that is specifically intended 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. This rulemaking adoption is administrative in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it 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. Rather, this rulemaking is procedurally required for the commission to adopt the approved regional solid waste management plans by rule in accordance with THSC, §363.062(f).

Furthermore, Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. The rulemaking adoption action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, or adopt a

rule solely under the general powers of the commission but is authorized by specific sections of the Texas Water Code, the Texas Government Code, and the Texas Health and Safety Code, which are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated this rulemaking adoption and performed analysis of whether the adopted rule constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rulemaking adoption is to adopt the new regional solid waste management plans for the 2022-2042 planning period that the commission has approved to replace the existing regional solid waste management plans from the 2002-2022 planning period, in accordance with THSC, §363.062(f), which states that the commission shall adopt an approved regional solid waste management plan by rule. The adopted rule will substantially advance this stated purpose by amending 30 TAC §330.647(a) and adding §330.647(d)(1)-(24) to incorporate the new approved regional solid waste management plans by reference into 30 TAC Chapter 330, Subchapter O.

Promulgation and enforcement of the adopted rule will be neither a statutory nor a constitutional taking of private real property. Specifically, the adopted rule does not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally), nor restrict or limit the owner's right to property and reduce its value by 25%

or more beyond that which would otherwise exist in the absence of the rules. In other words, the adopted rule will not burden private real property because the adopted rule is not directed at private real property owners. The rule adopts plans reflecting goals and objectives for solid waste management that regional and local councils of governments submitted to the commission for review. Therefore, the adopted rule will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found the adoption is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §29.11(b)(4) (relating to Actions and Rules Subject to the Coastal Management Program (CMP)), and will, therefore, require that goals and policies of the Texas CMP be considered during the rulemaking process.

The commission reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is administrative in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency of this rulemaking with the CMP goals and policies during the public comment period. No comments were received.

Public Comment

The commission held a public hearing on March 23, 2023. The comment period closed on March 27, 2023. The commission received comments from Harris County Pollution Control

Services (PCS) and one individual. The two commenters were neither in support of nor against the proposed rule revisions. The two commenters suggested changes to the proposed rule revisions.

Response to Comments

Comment

PCS commented that many landfills in Texas have permitted heights that are hundreds of feet in elevation and that recyclables are being disposed of in landfills. PCS expressed concern with future expansion of municipal solid waste (MSW) facilities and that expansion of MSW facilities may lead to nuisance complaints from the public. PCS noted that the Houston-Galveston Area Council's (HGAC) draft Regional Solid Waste Management Plan contains objectives to encourage development of larger regional facilities, expansion of existing MSW facilities, and development of transfer stations and citizen collection stations. PCS recommended an increase in the recycling rate percentage goals contained within the regional solid waste management plans to reduce expansion of MSW facilities in the future.

Response

THSC, §363.064 describes the required contents of a regional solid waste management plan. THSC, §363.064(a)(8) and 30 TAC §330.635(a)(2)(B)(ii) state that a regional solid waste management plan must establish recycling rate goals that are appropriate to the region. COGs used historical data, current recycling rates, population projections, local solid waste management plans, and stakeholder input to determine recycling rate goals that are appropriate for their regions, and these regional goals may differ from the statewide goal in THSC, §361.422(a). The HGAC plan establishes a recycling rate goal of 31% that HGAC determined is appropriate for its region because of historical data, waste generation

projections, and current and projected improvements of recycling programs in the region. The commission determined through its review of the regional solid waste management plans, in accordance with THSC, §363.062, that all COGs, including HGAC, met the requirement of including an appropriate regional recycling rate goal in their regional solid waste management plans.

THSC, §363.064(a)(11) requires COGs to “assess the need for new waste disposal capacity” in their regional solid waste management plans. Additionally, 30 TAC §330.643(a)(3)(D) requires a “description and assessment of the adequacy of existing resource recovery, storage, transportation, treatment, and disposal facilities and practices, and programs for the collection and disposal of household hazardous wastes.” HGAC is a COG subject to this requirement. The commission determined through its review of the regional solid waste management plans, in accordance with THSC, §363.062, that HGAC met the requirement to assess the need for new waste disposal capacity in its region, including recycling facilities, disposal facilities, transfer stations, and citizen collection centers.

In accordance with 30 TAC §305.122(d), “[t]he issuance of a permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of state or local law or regulations.” MSW facilities are required to operate in a way that prevents the occurrence of nuisance conditions in accordance with 30 TAC §330.15. If a facility violates a term of its permit or other authorization or applicable rules or regulations, the owner or operator of the facility may be subject to an enforcement action. The commission has made no changes in response to this comment.

Comment

PCS commented that other states are achieving recycling rates of over 40 percent and recommended that TCEQ should reevaluate the achievable recycling rate goal of 40 percent for the State of Texas that is provided in THSC, §361.422(a).

Response

The Texas state legislature initiates changes to solid waste management requirements in statute, and the commission’s role is to adopt rules that implement the legislation pursuant to the Texas Government Code, Chapter 2001. While §361.422(a) provides a state goal to reduce municipal solid waste disposal through source reduction and recycling, legislation codified in THSC, §363.064 states the requirements for regional solid waste management plans. THSC, §363.064(a)(8) requires that a regional solid waste management plan must “establish recycling rate goals appropriate to the area covered by the plan.” Additionally, THSC, §363.064(a) provides that a regional solid waste management plan must identify additional opportunities and make recommendations for encouraging and achieving waste minimization and waste reuse or recycling.

The recycling goal in THSC, §361.422(a) was implemented through actions in Chapter 328 of the agency’s rules. Chapter 328 is outside the scope of this rulemaking. The commission has made no changes in response to this comment.

Comment

PCS expressed concern that private recycling partnerships, such as the Houston Recycling Collaborative and the Community and Industry Partnership, are being developed without the knowledge or support of the COG, thereby reducing the COG’s facilitation of such partnerships and reducing their availability to the public.

Response

While THSC, Chapter 363, Subchapter D does not require TCEQ or the COGs to participate in or support private recycling partnerships, TCEQ will always encourage community partnerships between local businesses, non-governmental organizations, local governments, and the public as a way to understand the many perspectives from a community. TCEQ will notify HGAC of the Community and Industry Partnership and the Houston Recycling Collaborative. The commission has made no changes in response to this comment.

Comment

PCS commented that TCEQ should ensure MSW facilities comply with THSC §363.066(a) upon the commission's adoption of the regional solid waste management plans.

Response

The commission acknowledges this comment. THSC, §363.066(a) provides, “[o]n the adoption of a regional or local solid waste management plan by commission rule, public and private solid waste management activities and state regulatory activities must conform to that plan.” This rulemaking adoption does not change the requirement in THSC, §363.066(a) or the commission's implementation of it. Instead, this rulemaking adoption incorporates by reference the 24 regional solid waste management plans for years 2022 through 2042. The commission determined, through its review of the regional solid waste management plans, that all COGs met the requirement in 30 TAC §330.643(a)(3)(O) to identify in the regional solid waste management plans the processes the regions will use to evaluate whether a proposed MSW facility would conform to the regional plan. COGs may evaluate whether proposed MSW activities would conform to the regional solid waste management plan's

goals and objectives and provide that determination to TCEQ. The Executive Director may consider recommendations in COGs' conformance reviews during technical review of applications for MSW facilities. TCEQ is responsible for making final determinations approving or denying MSW facility applications. The commission has made no change in response to this comment.

Comment

PCS commented that some of the public notices to announce public meetings for the purpose of receiving public comment about proposed regional solid waste management plans were not published 15 days in advance of the public meetings in accordance with 30 TAC §330.639(d). PCS further commented that the public was not given an adequate opportunity to review and comment on the proposed regional solid waste management plans when public notices did not meet the rule requirement. PCS recommended that TCEQ review the public notices and require re-publication of any notices that did not meet the requirements of 30 TAC §330.639(d).

Response

During review of the regional solid waste management plans, TCEQ determined that, although some COGs published notice of their plans less than 15 days before their public meetings about the plans, the COGs substantially complied with 30 TAC §330.639 in notifying the public about the plans. In developing their plans, the COGs solicited input from stakeholders through several methods, including meetings and surveys. Each COG's advisory committee, composed of members representing a broad range of interests, including local government staff, public officials, private operators, citizen groups, and interested individuals, also provided input on the plans. All 24 COGs published notice of their plans' availability for public review in local newspapers and/or on the COGs' websites

and media pages and held public meetings to receive comments on their draft plans before submitting them to TCEQ. Some of the COGs, including HGAC, made changes to their plans based on the public comments they received, as documented in their regional plans. All regional solid waste management plans were listed on the COGs' agendas and approved by their boards of directors at meetings held open to the public. In August 2022, before this rulemaking, the commission published additional notice of the draft regional solid waste management plans and provided the public with an additional opportunity, not required by rule, to submit informal comments on the draft plans during an informal 30-day comment period. Many of the COGs posted notice of the informal comment period on their websites and/or media pages. No comments were received during that comment period. Also, with this rulemaking, there was a public comment opportunity in March 2023. The commission has made no changes in response to this comment.

Comment

PCS commented that, when considering public comment about solid waste permitting actions, the Executive Director often responds that public comments are outside of the Executive Director's jurisdiction to consider or that regulatory requirements of the solid waste permitting action have been met.

Response

Sometimes a public comment is submitted in response to a solid waste permit application that addresses a subject outside the agency's jurisdiction. In accordance with 30 TAC Chapters 39 and 55, the executive director considers and responds to all timely, relevant and material, or significant public comments about permit applications and draft permits, but may only consider issues that are within TCEQ's jurisdiction as it has been established

by the legislature when determining whether to make a change in response to public comment. TCEQ is not able to impose requirements or address matters for which the legislature has not conferred authority to the agency to do so. The commission has made no changes in response to this comment.

Comment

An individual expressed concern regarding how TCEQ and COGs track recycling rates. The individual commented that measuring the average amount of waste disposed per person for each county would allow TCEQ and counties in Texas to see which county recycling programs are effective and which are not. The individual requested that TCEQ and the COGs require landfills to report the amount of waste disposed for each county from which waste has originated, in addition to each landfill reporting the total amount of waste disposed in the landfill.

Response

30 TAC §330.643(a)(3) requires COGs to include the following data in their regional solid waste management plans: population patterns, commercial and industrial data, demographic information necessary to estimate solid waste quantities and characteristics, and estimates of future and current solid waste amounts by type. The data requirements do not include the average amount of waste disposed for each county. TCEQ reviewed the regional solid waste management plans according to the requirements in 30 TAC Chapter 330, Subchapter O, and the purpose of this rulemaking is to adopt the plans that were approved using the requirements in place at the time of the review.

30 TAC §330.675(a)(1)(C) requires municipal solid waste disposal facilities to report the

amount of waste they receive for processing or disposal. However, THSC, Chapter 363, Subchapter D does not authorize COGs to require landfills to report the amount of waste disposed for each county from which waste has originated. The commission has made no change in response to this comment.

Comment

An individual expressed concern about the effectiveness of current efforts in Texas to recycle mattresses. Specifically, the individual voiced concern that the Mattress Recycling Council, if established in Texas, would destroy mattresses that could be refurbished. The individual requested that mattress inspectors be established again. The individual stated that each city in Texas has a Salvation Army and requested that the Salvation Army be included in decisions regarding the collection of mattresses to be refurbished.

Response

The commission acknowledges receipt of this comment. The requirements for the manufacture, sale, and distribution of mattresses are described in 25 TAC, Chapter 205, Subchapter A. These rules are under the authority of the Texas Department of State Health Services. Issues regarding the collection of mattresses to be refurbished should be presented to the Texas Department of State Health Services. The commission has made no changes in response to this comment.

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

§330.647

Statutory Authority

The rulemaking is adopted under Texas Water Code (TWC), §5.102 (relating to General Powers), which provides the commission the power to perform any acts necessary and convenient to the commission's exercise of its jurisdiction and powers as provided in this code and other laws; TWC, §5.103 (relating to Rules), which authorizes the commission to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; TWC, §5.105 (relating to General Policy), which provides the commission with the authority to establish and approve by rule all general policy of the commission; the Administrative Procedures Act under Texas Government Code, Chapter 2001, which authorizes the commission as a state agency to adopt rules pursuant to the rulemaking process; and Texas Health and Safety Code (THSC), §363.062 (relating to Regional Solid Waste Management Plan), which authorizes the commission to consider for approval and to adopt by rule an approved regional solid waste management plan that is developed and submitted to the commission for review in accordance with THSC, §363.0615 (relating to Responsibility for Regional Planning).

The adopted rulemaking implements THSC, Chapter 363, Subchapter D (relating to Regional and Local Solid Waste Management Plans).

§330.647. Approved Regional and Local Solid Waste Management Plans.

(a) Plans approved. The current effective regional solid waste management plan for each region or local solid waste management plan for a local government is the latest plan, including plan amendments, that has been adopted by the commission or approved by the executive director. Copies of approved plans shall be kept on file and available for public review at the Texas Commission on Environmental Quality library. Those plans, including the regional solid waste management plans adopted in subsection (d) of this section, and any adopted amendments to the plans, are incorporated into this subchapter. Updates to an approved regional or local plan that do not require official adoption by the commission, as specified under §330.641(f) of this title (relating to Procedures for Regional and Local Plan Submission, Approval, and Distribution), may be incorporated into an approved plan for informational purposes, as each update is approved by the executive director. Each plan's effectiveness applies only for the geographical area described in the plan and for the period designated in the plan.

(b) Conflicting provisions. By adopting a regional or local plan, the commission determined that the plan has been developed according to commission rules and does not conflict with the state plan. If it should later be determined that provisions of an adopted plan do conflict with provisions of the state plan, then provisions of the state plan shall prevail.

(c) Agency responsibilities. It shall be the responsibility of the council of governments to coordinate the implementation of regional policies and recommended actions in an approved regional plan and coordinate local planning efforts. It shall be the responsibility of affected local governments to implement the policies and recommended actions of adopted regional and local plans and to maintain policies and activities that do not conflict with provisions in current state, regional, and local solid waste management plans.

(d) Approved plans. The following plans, and their effective dates are adopted by reference.

(1) Alamo Area Council of Governments (2022-2042)

(2) Ark-Tex Council of Governments (2022-2042)

(3) Brazos Valley Council of Governments (2022-2042)

(4) Capital Area Council of Governments (2022-2042)

(5) Central Texas Council of Governments (2022-2042)

(6) Coastal Bend Council of Governments (2022-2042)

(7) Concho Valley Council of Governments (2022-2042)

(8) Deep East Texas Council of Governments (2022-2042)

(9) East Texas Council of Governments (2022-2042)

(10) Golden Crescent Regional Planning Commission (2022-2042)

(11) Heart of Texas Council of Governments (2022-2042)

(12) Houston-Galveston Area Council (2022-2042)

(13) Lower Rio Grande Valley Development Council (2022-2042)

(14) Middle Rio Grande Development Council (2022-2042)

(15) Nortex Regional Planning Commission (2022-2042)

(16) North Central Texas Council of Governments (2022-2042)

(17) Panhandle Regional Planning Commission (2022-2042)

(18) Permian Basin Regional Planning Commission (2022-2042)

(19) Rio Grande Council of Governments (2022-2042)

(20) South East Texas Regional Planning Commission (2022-2042)

(21) South Plains Association of Governments (2022-2042)

(22) South Texas Development Council (2022-2042)

(23) Texoma Council of Governments (2022-2042)

(24) West Central Texas Council of Governments (2022-2042)