

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** April 18, 2008
Thru: LaDonna Castañuela, Chief Clerk
Glenn Shankle, Executive Director
From: Dan Eden, Deputy Director
Office of Permitting, Remediation & Registration
Docket No.: 2007-0804-RUL
Subject: Commission Approval for Rulemaking Adoption
Chapter 305, Consolidated Permits and Chapter 330, Municipal Solid Waste
MSW Revisions to Chapters 305 and 330
Rule Project No. 2007-001-305-PR

Scope of the rulemaking:

This rulemaking would provide applicants a method of requesting a substantive change to a permitted municipal solid waste (MSW) facility through submittal of only those portions of a permit affected by the proposed change. The rule also would add signage requirements for new MSW permits and major amendments and it would increase the distance that mailed notice is provided from the current 500 feet to ¼ mile for certain actions relating to MSW permits and registrations. Public notice would be required for some modifications which currently do not require notice, and it would require a major amendment for some permit actions currently processed as a modification with public notice. Other changes in the rule are to definitively state that an MSW Temporary Authorization may apply to either major or minor changes to a permit or registration and to specify that the means of transferring an MSW permit or registration is a permit or registration modification with public notice.

Reasons for the rule package:

The time and effort required to process a municipal solid waste (MSW) major amendment application is almost identical to that of a new permit application. Some changes to a permit may have a substantial effect on operations, but enactment of the change would require relatively few revisions to the permit document. The current permit amendment process is costly and time consuming to all involved. These adopted rules specify that under certain conditions the application, review, and any subsequent hearing for some substantive permit changes are limited to the requested change and related materials. This rulemaking also adds signage requirements for new MSW permits and major amendments, and increases the distance that mailed notice is provided for certain actions relating to MSW permits and registrations. Both measures are designed to increase the likelihood that potentially affected parties will be informed that a new MSW facility or a change to an existing MSW facility is being proposed.

Statutory Authority

The rule change is adopted under the authority of Texas Health and Safety Code (THSC), §361.024, which provides the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act; THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction; THSC,

Re: Docket No. 2007-0804-RUL

§361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties.

Potentially controversial matters:

The preamble to the proposed rule solicited comment on use of the terms “owner of the facility” and “operator” as used in §305.43(b), Who Applies. Comment was received which both favored and opposed revision of the rule regarding the clarification of these terms. No change to the rule was made in response to comment. Due to past practice regarding major amendments and the absence of permit term limits, the public may oppose a rule allowing significant changes to a permit without subjecting the entire existing permit to public scrutiny and comment.

Public comment:

Open participation stakeholder meetings attended by representatives from the waste industry, environmental groups, and the public were held in October 2006 and January 2007 to receive input on the proposed rule revisions. The Municipal Solid Waste Advisory Council provided input at their January 2007, April 2007, and October 2007 quarterly meetings. A public hearing on the rule was held on January 8, 2008. Industry supported the limited application concept and also indicated a limited expansion of public notice requirements would be acceptable. Environmental and public interests support expanded public notice but oppose the limited application concept without the addition of permit term limits. Several commentors requested that the rulemaking include changes to §305.43 (regarding Who Applies) to clarify who is responsible for submitting an MSW permit application.

Significant changes from proposal:

Examples of activities that could be allowable through the limited application process have been provided in the rule. Three additional activities were identified as allowable with public notice, including the addition of property to the facility legal description for the purpose of increasing the buffer zone, and five activities were added to the list of allowable modifications without public notice. The amount of information required to be provided on signs for new permits and major amendments was reduced. Changes from proposal were in response to comment.

Key points in adoption rulemaking schedule:

<i>Texas Register</i> proposal publication date:	November 30, 2007
Six-month <i>Texas Register</i> filing deadline:	May 30, 2008
Anticipated <i>Texas Register</i> publication date:	May 23, 2008
Anticipated effective date:	June 12, 2008

Agency contacts:

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Commissioners

Page 3

April 18, 2008

Re: Docket No. 2007-0804-RUL

Attachments

cc: Chief Clerk, 5 copies
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