

Stakeholder Meeting Minutes - HB 2541 Rulemaking Stakeholder Meeting

October 1, 2007

Alamo Area Council of Governments Bldg.

Al J. Notzon Boardroom

8700 Tesoro Drive

San Antonio, Texas 78217

7:00 p.m. - 9:00 p.m.

The meeting began with an introduction by Dr. Richard Carmichael, Manager of the Municipal Solid Waste Permits Section, describing House Bill (HB) 2541, passed during the 80th Legislative Session 2007. HB 2541 requires the TCEQ to adopt new limitations on material storage at non-permitted and non-registered compost and mulch facilities within certain counties. At present, Bexar County is the only county that satisfies certain provisions of the bill that have additional criteria for population and the presence of the Edwards Aquifer. The legislation becomes effective September 1, 2007 and requires the TCEQ to write rules. However, rules adopted by the TCEQ shall not become effective until the first anniversary date of rule adoption.

Dr. Carmichael referred to a TCEQ-prepared map that displays Bexar County and the Edwards Aquifer Transition and Recharge Zones within Bexar County. He also reviewed a concept paper, provided as a handout for the meeting, regarding possible concepts to implement HB 2541.

Dr. Carmichael read aloud a letter sent by Texas Senator Leticia Van de Putte, R.Ph., District 26 that reiterated and supported the TCEQ-suggested concepts in order to protect the people of San Antonio.

Dr. Carmichael asked if there were any questions about the process before proceeding with the comments.

Question 1: Describe the additional requirements that would apply to certain facilities previously exempt from Chapter 328 storage limitations. Does that mean that those facilities that were previously exempt would now come under this rule? Is that what additional requirements means or are there additional requirements beyond the bullets listed in the concept paper?

Answer: Existing Texas Health and Safety Code (HSC) §361.119 exempts metal recyclers, disposal facilities, and local governments from regulation as recyclers. HB 2541 added a new section HSC §361.1191 that does not exempt those entities within Bexar County from certain requirements.

Question 2: Is this rule applicable only to Bexar County or to other adjacent counties?

Answer: This rule on combustible material pile size limitations, the total quantity of combustible material stored, and storage time limitations for the overall amount of material stored at a facility is applicable only to Bexar County at this time.

Question 3: Are there plans to include other counties?

Answer: There are no plans to include other counties at this time. The Legislature created a series of requirements based on the area of certain Edwards Aquifer recharge features and also based on the population of a county. There are two other counties adjacent to Bexar County that could be subject to this new legislation in the future. The TCEQ does not see this happening in the near future.

Question: Will this bill also apply to municipal and county facilities?

Answer: Within Bexar County, those facilities that are exempted by HSC §361.119 are not exempted by the new section, HSC, §361.1191, that was created by HB 2541. Some of these facilities could be subject to new requirements when implementing this new section.

Dr. Carmichael solicited stakeholder comments.

Stakeholder Comments:

This rulemaking sets the stage for what will eventually become a statewide action. It is just a matter of time before this action spreads to surrounding counties. The facility that had a fire in Helotes, TX (Helotes) accumulated and stored material that was not compost and was not mulch, it was piled up brush. There is a huge difference between legitimate composting and mulching operations and what happened at Helotes. A legitimate composter would not pile compost 80 or even 25 feet high. The resulting contamination at Helotes was from the water that resulted from attempts to put out the fire. Had people in the industry been consulted about how to put out the fire, there probably would not have been a problem. Even with the problems that did occur, some of the proposed changes would not have fixed that. A liner would not have made a difference. The contaminated water would still have run off the pads, run off the liner, and overflowed the ponds. There still would be the problem of contaminated water.

It is important to decide and define what is a combustible material. Compost by its nature is 40% - 60% moisture and is not combustible. The material is too fine, too moist. Smolder fires are possible on the fringes of dry compost but not like the conflagration at Helotes.

Those distinctions between what is brush, mulch, and compost are important, especially when it comes to setting quantities and storage limits of combustible materials. Compost, by itself, is not a combustible material. The 90% removal requirement every six months is problematic. Two-thirds of a composting business is in the spring. A business must carry a lot of inventory to satisfy the spring demand. The total amount can better be addressed by setting a maximum volume. High quality compost takes a long time to produce, between six to nine months.

Reporting requirements never really prevented much.

A suggested 8,000 square-foot area limitation per pile is about a box of 7,000 cubic yards. It would be easier to regulate a maximum pile size. Suggest a 10,000 cubic yards maximum limitation, easy to measure, easy to verify.

Liners are prohibitively expensive; retrofitting would be difficult from a material management point of view. A liner would not have prevented the event that happened at Helotes. Groundwater monitoring wells are a good idea, are expensive but easy. Groundwater monitoring wells will guarantee everyone that there is not a groundwater problem.

The new changes will help prevent another event like Helotes.

A commentator was concerned that the rulemaking is only dealing with Bexar County. There are currently problems with the water and air, particularly dust and odors from a compost facility in Comal County. Consider other counties as well.

A commentor was concerned that limitations may go statewide and affect a lot of other facilities across the state. Recommend the International Fire Code which recommends a pile size of 37,000 cubic yards. Sham recyclers are causing the legitimate operators a black eye. Legitimate operators move material. The sham operators are wagging the tail of the agency when the legitimate operators are having to pay the consequences. Recommend maximum pile size limitations per facility, feels the suggested 8,000 sq. ft. pile size is going to restrict the legitimate operators.

Any new standards will be adopted by counties and cities. The pile size limitation is too restrictive along with fire lanes. When recycling in a city, real estate is extremely expensive. The TCEQ has not looked into storm event possibilities and disaster planning with respect to the turnover rate. Regulations are already in place to deal with nuisance conditions that can be enforced. The industry is concerned that any new rules will be the new standard. There is still the problem of how to easily identify a sham recycler. Legitimate operators do not want their inventory to burn up. Selling the inventory is their livelihood. Most operators are good operators that are never heard about. The bad operators are running an illegal landfill. Bad operators are setting the standard for the legitimate operators.

There are plenty of rules currently in place for sham recycling that could have prevented the situation at Helotes. The six-month time interval is not appropriate for a seasonal business. The 50-foot buffer zone is appropriate but should have an exemption for an owner who also owns adjacent property. Do not apply the 50-foot buffer zone to storage of product that does not have an associated hazard. The International Fire Code is a reasonable standard for restrictions on the storage of combustible material. Pile height restrictions are redundant with the 8,000 sq.ft. area limits and total volume limits. A fire on a long thin row is easier to put out than a fire on a big pile, so a one-size -fits-all approach may not be appropriate when defining pile area limits. The cross-section of a pile matters with respect to firefighting. Fifty-foot wide fire lanes are too much, firefighting equipment width would be adequate when working with appropriate pile sizes.

Regarding establishing storage limits of combustible material, there are factors outside of an operator's control, such as unseasonable rains, that reduce sales and cause material accumulation. The material would be sold later but not within a six-month period. The majority of the people who remain in the business are legitimate. People who are not in the business for the better good fall out of the industry and may leave a mess behind. Step up enforcement and not pull in additional regulation on the legitimate companies. It is a competitive business with low profit margins. The incentive is to move material and not to accumulate material. However, it takes time to make good compost.

Dr. Carmichael mentioned that the TCEQ will accept comments until October 15, 2007. He reiterated that the TCEQ is working with the legislation passed, namely HB 2541. He was appreciative of the comments made, they will be considered. The legislation is primarily restricted to Bexar County. If the rulemaking should be expanded, please submit those comments in writing. The bill requires a time limit but comment if there is good rationale for time limits, or bulk material, or some appropriate limitation. Please assist the TCEQ with the rationale for how to implement the legislation.

Steve Shepherd, attorney with the TCEQ Environmental Law Division, elaborated on earlier explanations that most of the recycling legislation is relatively new, starting in 2001. The 2001 legislation had some significant exemptions to turnover rates and recordkeeping, specifically for a holder of a disposal permit (most commonly a landfill), a local government, or a metal recycler. This new legislation, HB 2541, was put into a different section and does not retain those exemptions. Those who may have been exempt from certain recordkeeping or turnover requirements may be subject to requirements if located in Bexar County. Metal recyclers should not be affected as they do not typically create mulch or compost. The legislation focuses on storage of combustible materials. Rulemaking plus a one year delay in the effective

date means affected persons won't be subject to new rules until about one and a half to two years from now.

Meeting adjourned.