

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Municipal Solid Waste Management and
Resource Recovery Advisory Council (Council)
TCEQ Complex, Building E, Room 201S, Austin, Texas
Thursday, December 16, 2004**

Meeting Highlights

MEMBERS PRESENT

Bob Gregory
William R. Hindman, P.E.
H. C. Clark, Ph.D.
The Honorable Commissioner Jack Cobb
Robert L. Dow
Donald R. Hatcher, P.E.
Elena Quintanilla
David Stephens
The Honorable Mayor R. A. "Dick" Nugent
Karen C. Overgaard
Lisa Perrine
Charles Rivette, P.E.
Mark Rose

MEMBERS ABSENT

The Honorable Paul J. Escobar
The Honorable D. C. "Chris" King
The Honorable Hugh L. Landrum
The Honorable Annise D. Parker
David S. Yanke

DIVISION SUPPORT TEAM

Gary Trim, Waste Permits Division
Carolyn Mees, Waste Permits Division

TCEQ STAFF

Wade M. Wheatley, P.E., Director, Waste Permits Division
Richard C. Carmichael, Ph.D., P.E., Manager, Municipal Solid Waste Permits Section
Wayne Lee, P.E., Municipal Solid Waste Permits Section
Wayne Harry, P.E., Municipal Solid Waste Permits Section
Edward Block, Environmental Planning and Implementation
Hector Mendieta, P.E., Policy and Standards

GUESTS

Eleanor Whitmore, Texas Campaign for the Environment, Arlington

Dan Wittliff, Dan Wittliff Consulting PLLC
Vance Kemler, City of Denton
Ed Rhodes, Republic Waste, Abilene
Claire Arenson, Saitas and Arenson, Austin
Jack Reed, Positive Impact Waste Solutions, Odessa
Donna Pirkle, Lloyd Gosselink, Attys., Austin
Latrice Hertzler, Future Link Technologies, Austin
Lisa Anderson, NSWMA
Dianne Lenbert, City of Kingsville
Risa Fisher, Risa Fisher & Associates, Inc., Dallas
H. Wayne Lisenbec, City of Anson
Trek English, NE Action Group, Austin
Robert Vickery, Republic Waste, Austin
John Clegg, TEAM, Austin
James Morgan, TEAM, Austin
Mike Oden, HDR Engineering, Dallas
Angela Moorman, Russell, Moorman & Rodriquez, Georgetown
Lara Garey, Garey Environmental, Montgomery County
Jack Sinclair, TXI, Dallas
Tony Kolby

- **Welcome and Introduction of Members**

Mr. Gregory, Advisory Council President, asked the council members, TCEQ staff, and guests to introduce themselves. A motion was made by Donald Hatcher to approve the August 19, 2004 meeting highlights. The motion was seconded by Lisa Perrine and was approved by unanimous vote.

- **Administrative Announcements - Gary Trim**

Mr. Trim invited everyone to attend the agency's Christmas Party that was being held at noon. He inquired whether or not everyone was getting their e-mails. Since proposed 2005 meeting dates are scheduled a year in advance, a sheet was passed around to note scheduling problems for any of the proposed meeting dates.

- **Welcome - Wade Wheatley, Division Director**

Mr. Wheatley stated that the Municipal Solid Waste Section staff is still working on the guidelines to supplement the newly-adopted rules for Site Operating Plans, and he will brief the TCEQ Executive Director tomorrow on the status. The new rules were adopted in November 2004, but the guidelines have not yet been approved.

- **MSW Permits Section Manager's Report - Richard Carmichael, P.E., PhD.**

Dr. Carmichael noted that there was a full agenda with all the rule packages. Wayne Harry and Wayne Lee would speak on the rules.

Mr. Gregory inquired about the audits that were being conducted in the Waste Permits Division, Small Business and Environmental Assistance Division, Office of Administrative Services, etc . Mr. Wheatley said the audit was to look at management of these Divisions. An extensive list of customers was given to the auditors. Some Council members were on that list. Mr. Gregory received an e-mail about the audit and was curious as to why he received it. Mr. Gregory encouraged all the council members to respond back to the auditors, and said he thought the regulated community and the general public should be able to give input.

- **Major Mod-Rule Concept - Richard Carmichael/Wayne Lee**

Mr. Rivette inquired about a new listing of items to be added to 305.70; what qualifies for listing as a major modification; and what requires notice. He felt there was a potential for hearings.

Dr. Carmichael said that a modification can include many requested changes. Major amendments require notice. Modifications do not open up the whole permit. Minor amendments are not subject to a contested case hearing. The major modification rule is not drafted yet. Dr. Carmichael said the major modification rule would also apply to registrations. Mr. Wheatley stated that major modifications would limit the scope of the application and therefore could limit the use of engineering by the company. Mr. Dow said there was a need to make this as clear as possible, since what the TCEQ has done is complicated. He suggested the use of different terminology. Mr. Wheatley replied that he had briefed two TCEQ Commissioners, and they understood it. Ms. Quintanilla asked how much time is saved using the major modification rule? It was stated that this would vary on what an applicant is changing. For example, changing operating hours as a major modification would save a lot of applicant preparation and agency review time since other unrelated aspects of the permit, such as surface water drainage, liner design or site geology would not be included in the request and not subject to review.

- **Unutilized MSW Permits Rule - Richard Carmichael/Wayne Lee**

Mr. Lee stated that the Unutilized MSW Permits Rule was discussed three prior times (March, June, Aug.) and staff has gone forward with the proposal. On December 1, 2004, it went to the TCEQ Commission Agenda and was approved to go out for comments. It will be printed in the Texas Register for a 30 day comment period from December 17, 2004 thru January 17, 2005. There is a required notification of permit to the public when waste has not been accepted in two years. The three notices are: mail outs, newspaper ads, and

signage. The rules will provide fair-play to the public that live near a facility. It outlines some time frames for compliance.

If a permittee has not opened a landfill in seven years after receiving a permit, there is potential for revocation of the permit for failure to comply. Mr. Rivette asked how staff decided on seven years, and Mr. Lee responded that staff used the Compliance History Schedule.

Public Comments

Ms. Angela Moorman said a facility may lose their permit because it takes so long to have hearings, etc. She said that Corpus Christi is probably going to lose their permit under the above proposed rules. If you follow all the rules, seven years is an arbitrary date. Mr. Dow commented that a seven year period triggers a review of that permit.

Mr. Tony Kolby stated that he had two issues: (1) whether a site should be subject to revocation, and (2) notice by mailing can be hazardous since the recipient can claim he didn't receive the notice. He asked if the owner could possibly file a deed recordation as an answer to that problem?

Mr. Van Kimbler, City of Denton, stated that to maintain the Solid Waste Master Plan, he has to include 50 years' capacity and has to look for a site and would start the permit process, and he thinks the seven year rule should be modified so he can plan for the future without having to worry about the seven year rule. He will look ahead as much as fifteen years.

Mr. Dow stated that politics are involved, and senators have power within this agency. The seven year rule opens up an issue that politically can be used to come after you. He said it was amazing that the political game can regulate the agency.

Mr. Gregory suggested that the seven year rule be discussed at the January 21 meeting. No action was taken on his proposal. He encouraged the Council Members to study the rule and to be ready to make recommendations.

Mr. Gregory introduced Commissioner Jack Cobb, a new council member from Yoakum County. He is in the Agricultural Chemical Industry and has West Texas interest in arid exempt landfills. Yoakum County has spent over \$1,000 per person in county money to get their landfill started.

- **Site Operating Plan (SOP) Guideline - Richard Carmichael/Wayne Lee**

The Site Operating Plan revision, adopted in November 2004 and became effective on December 2, was a result of court action that raised the questions on how SOP rules were being handled. There was a lot of participation and interest from the public on site operations. Everyone accepts the site operating rules, although everyone didn't get

everything that they wanted.

The Site Operating Plan Guideline is a guidance document for the applicants on TCEQ's interpretation of the new rules.

Dr. Carmichael stated that Mr. Lee has devised a "call-in" schedule for landfill site operating plans based on COG regions. The call-in will start with large facilities in a given region. They found a break in facility waste acceptance rates between large and small facilities upon which to base an implementation schedule.

The Chapter 330 rule package SOP guidance document will be complete within two months. The agency will start calling facilities to update their SOPs.

Public Comments

Ms. Angela Moorman said that in Section 5.2, Waste Acceptance Rate, the first paragraph contradicts what is in the rule. The guidance document speaks in terms of a "projected rate" and seems to be misleading. A "projected rate" is not addressed in the rule and should not be talked about.

Ms. Trek English found the guidance manual confusing, redundant, and burdensome to the industry. When there is a major rule amendment, you need to hear from the public. In ten years, she hasn't received notice of anything that has happened at the landfill near her. She said it's difficult to understand how expansion can be a major modification. This new rule is dangerous for the public. She asked the TCEQ why they were starting this modification process.

Mr. Bobby Vickery commented on major amendments vs. minor amendments. In 305.62, they aren't allowed to have a minor amendment. He thinks the proposed major modification rules is good so you can make small changes without opening up the entire permit and can focus on just what you want to change. As an industry, it's good not to have to open up the permit for little changes.

Ms. Elena Quintanilla said there is a trend in changes in landfills. They are becoming taller and larger. The public doesn't understand changes that landfills make.

- **Chapter 330 Rules Re-Write Status Report - Wayne Harry/Richard Carmichael**

The Chapter 330 Rules were last reviewed in 1993. Since then, no one has wanted to open up the entire rule package. MSW staff went on a seven city tour to get input and to make it easy for the public to clarify the requirements for landfills, transfer stations, etc. BRIEFING POINTS OF THE SEVEN CITY TOUR IS ATTACHED.

- **Chapter 330 Rules Re-Write Discussion - MSW Advisory Council Members
Public Comments - General Public/Visitors**

Public Comments

Mr. Wayne Lisenbec, City of Anson, has a concern that in West Texas the TCEQ is re-

interpreting the tonnage allowance for arid exempt landfills from up to 40 tons per day to only 20 tons per day. He asked if it was a legitimate consideration to change to twenty tons a day. Dr. Carmichael answered that it depends on the permit. An arid exempt permit is twenty tons a day. Mr. Lee answered that arid exempt landfills are permitted for twenty tons for Type I and Type 4. A Type I landfill with a type IV cell is limited to a total of 20 tons a day of combined waste.

Ms. Risa Fisher said there needs to be provisions for a way to register composting operations on landfills where they're located on the liner. Mr. Harry said to submit an application to modify the facility.

Ms. Lara Garey had a question concerning taking medical waste to an authorized Type 5 facility. The answer was to change to an authorized (permitted) facility. There are many rule interpretations out there. The question is how will the agency handle these changes to existing permits. Are they going to add performance standards to permits? The answer is that the intent is not to make it retroactive to the permits. Anything that had not been administratively complete would need to be changed.

Ms. Karen Overgaard was told by a vendor that compost facility operators were unable to find someone to underwrite financial assurance. They are using there lines of credit to cover the financial assurance requirements. Mr. Wheatley responded to have them contact him.

- **Action Items/Resolutions on Draft 330 Rules-MSW Advisory Council Members**

None

- **Discussion and action to continue meeting Friday, December 17, 2004**

It was decided that there would be no meeting held on Friday, December 17, 2004.

The proposed 2005 meeting months would be: January 20 & 21, March, June, September, and December.

The meeting adjourned.

Attachment