

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**  
for Rulemaking Adoption

**AGENDA REQUESTED:** July 2, 2014

**DATE OF REQUEST:** June 13, 2014

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Bruce McAnally, (512) 239-2141

**CAPTION: Docket No. 2013-1390-RUL.** Consideration of the adoption of amendments to Sections 330.7, 330.671, 330.673, and 330.675 of 30 TAC Chapter 330, Municipal Solid Waste; and the repeal of Sections 339.1 - 339.3 of 30 TAC Chapter 339, Groundwater Protection Recommendation Letters and Fees.

The adoption would implement House Bill (HB) 7, 83rd Legislature, 2013, Regular Session, relating to the reduction in the municipal solid waste disposal fees paid to the commission and revisions in the waste disposal fee exemption and credit for material diverted from disposal and processed into compost or mulch. The rulemaking would also implement Senate Bill (SB) 819, 83rd Legislature, 2013, Regular Session, relating to the increase in the population limit, from 10,000 to 12,000 people, for counties or municipalities seeking authorization under a permit by rule to dispose of demolition waste from abandoned or nuisance buildings. The rulemaking would implement HB 2694, Article 2, 82nd Legislature, 2011, Regular Session, relating to the transfer from this commission to the Railroad Commission of Texas duties relating to the protection of groundwater resources from oil and gas associated activities by repealing commission rules pertaining to the issuance of groundwater protection recommendation letters. The proposed rules were published in the January 31, 2014, issue of the *Texas Register* (39 TexReg 466). (Charlyne Fritz, Steven Shepherd) (Rule Project No. 2013-050-330-WS)

Ashley Forbes for Brent Wade  
**Deputy Director**

Earl Lott  
**Division Director**

Bruce McAnally  
**Agenda Coordinator**

Copy to CCC Secretary? NO YES X

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners

**Date:** June 13, 2014

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

**From:** Brent Wade, Deputy Director  
Office of Waste

**Docket No.:** 2013-1390-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 330, Municipal Solid Waste  
Chapter 339, Groundwater Protection Recommendation Letters and Fees  
HBs 7 & 2694 and SB 819: MSW Tipping Fees & Exemptions, RRC Transfer,  
and PBR for Disposal of Demolition Waste Rule  
Rule Project No. 2013-050-330-WS

### **Background and reason(s) for the rulemaking:**

The adopted rulemaking is part of the implementation of House Bill (HB) 7 and Senate Bill (SB) 819, both from the 83rd Legislature (2013) and HB 2694, Article 2, from the 82nd Legislature (2011).

HB 7, authored by Representative Drew Darby, reduced the municipal solid waste disposal fees paid to the commission, revised the allocation of the disposal fee revenue, and revised the disposal fee exemption and credit for material diverted and processed into compost or mulch. Specifically, HB 7 amended the Texas Health and Safety Code (THSC), §361.013(a) and (f) and §361.014(a) and (b). The municipal solid waste disposal fee, commonly known as the tipping fee, was reduced by 25%. Secondly, the 50%/50% allocation percentage of the tipping fee revenue between Accounts 5000 and 0549 was revised. The Waste Management Account 0549 was allocated 66.7% of the tipping fee revenue and the Solid Waste Disposal Fee Account 5000 was allocated 33.3%. Lastly, the tipping fee exemption and credit was revised to allow the diversion of a wider variety of source-separated material and to allow mulching, in addition to composting, as a diversion process.

SB 819, sponsored by Senator Robert Duncan, increased the population limit, from 10,000 to 12,000 people, for counties or municipalities seeking authorization under a permit by rule (PBR) to dispose of demolition waste from abandoned or nuisance buildings. Specifically, SB 819 amended THSC, §361.126.

Article 2 of HB 2694, authored by Representative Wayne Smith, transferred from this commission to the Railroad Commission of Texas (RRC) duties relating to the protection of groundwater resources from oil and gas associated activities. Specifically, HB 2694, Article 2 amended the Texas Natural Resource Code, §91.011 and added §§91.0115, 91.020, and 91.1015 and amended the Texas Water Code, §27.033. The law transferred from the commission to the RRC, effective September 1, 2011, those duties pertaining to the responsibility of preparing groundwater protection advisory/recommendation letters. The RRC has adopted rules pertaining to the issuance of groundwater protection letters on May

Re: Docket No. 2013-1390-RUL

24, 2013, which became effective on January 1, 2014. The commission can repeal 30 TAC Chapter 339 pertaining to the issuance of groundwater protection letters.

**Scope of the rulemaking:**

The adopted rulemaking amends 30 TAC §§330.7, 330.671, 330.673, and 330.675 to reflect the changes to the THSC. Chapter 339 is no longer necessary because the Surface Casing Program and responsibilities have been transferred to the RRC and the RRC has adopted Surface Casing rules.

**A.) Summary of what the rulemaking will do:**

Revision to §330.7 increases the population limit, from 10,000 to 12,000 people, for counties or municipalities seeking a PBR to dispose of nuisance or abandoned buildings.

Revisions to §330.671 and §330.675 allows mulching, in addition to composting, as a process for diverted materials and allows a wider variety of material to meet the source-separated exemption.

Revision to §330.673 reduces the municipal solid waste disposal fee by 25%. For waste disposed of at a landfill, the fee is reduced as follows:

- \$1.25 to \$0.94 per ton,
- \$0.40 to \$0.30 per compacted cubic yard, and
- \$0.25 to \$0.19 per uncompacted cubic yard.

For waste disposed of by other means (incineration, land application, etc.), the fee is reduced as follows:

- \$0.62 and one-half cent to \$0.47 per ton,
- \$0.20 to \$0.15 per compacted cubic yard, and
- \$0.12 and one-half cent to \$0.09 and one-half cent per uncompacted cubic yard.

The repeal of §§339.1 – 339.3 will eliminate rules that are no longer applicable to the commission since responsibility for the Surface Casing Program has been transferred to the RRC and the RRC has adopted Surface Casing rules.

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

The state statutes, revised by HB 7, HB 2694 Article 2, and SB 819, necessitate the revision to the commission rules.

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

None.

**Statutory authority:**

This rulemaking implements HB 7 and SB 819 from the 83rd Legislature, 2013 and the remaining portion of TCEQ's Sunset Bill, HB 2694 from the 82nd Legislature, 2011.

Commissioners

Page 3

June 13, 2014

Re: Docket No. 2013-1390-RUL

TWC, §5.102 – General Powers

TWC, §5.103 – Rules

THSC, §361.011 – Commission’s Jurisdiction: Municipal Solid Waste

THSC, §361.013 – Solid Waste Disposal and Transportation Fees

THSC, §361.014 – Use of Solid Waste Fee Revenue

THSC, §361.024 – Rules and Standards

THSC, §361.061 – Permits: Solid Waste Facility

THSC, §361.126 – Disposal of Demolition Waste from Abandoned or Nuisance Building

**Effect on the:**

**A.) Regulated community:**

Effective June 14, 2013, the regulated community saw a 25% reduction in the solid waste disposal fees paid to the TCEQ.

The rulemaking will allow the regulated community to receive an exemption from the tipping fee on a wider range of source-separated material. The rulemaking will also allow mulching, in addition to composting, as a process for diverted material.

With the increase in the population limit from 10,000 to 12,000 people, approximately 12 additional counties or municipalities may dispose of nuisance or abandoned buildings by a PBR. This value was based on 2010 census data.

**B.) Public:**

None.

**C.) Agency programs:**

None.

**Stakeholder meetings:**

A stakeholder meeting was not held.

**Public comment:**

A public hearing was held on February 18, 2014, in Austin. No comments were provided during the hearing. Two comments were received from the City of Houston and the Lone Star Chapter of the Solid Waste Association of North America (TXSWANA). Their comments opposed the 25% reduction in the solid waste disposal fee and the reduction in the allocation percentage to the Regional Solid Waste Grants Program (Account 5000). No changes to the rules were made because the commission is required to implement the statute.

**Significant changes from proposal:**

No changes to the proposed rules were made.

**Potential controversial concerns and legislative interest:**

None.

Commissioners

Page 4

June 13, 2014

Re: Docket No. 2013-1390-RUL

**Does 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?**

If this rulemaking does not go forward, then commission rules will not reference the current version of THSC, §§361.013, 361.014, 361.061, and 361.126. The commission rules would not reference the 25% reduction in the solid waste disposal fee. The commission rules would continue to include requirements for the Surface Casing program that is no longer under the commission's jurisdiction.

**Key points in the adoption rulemaking schedule:**

***Texas Register* proposal publication date:** January 31, 2014

**Anticipated *Texas Register* adoption publication date:** July 25, 2014

**Anticipated effective date:** July 31, 2014

**Six-month *Texas Register* filing deadline:** July 31, 2014

**Agency contacts:**

Charlyne Fritz, Rule Project Manager, Waste Permits Division, (512) 239-2331

Steve Shepherd, Staff Attorney, Environmental Law Division, (512) 239-0464

Bruce McAnnally, Texas Register Coordinator, General Law Division, (512) 239-2141

**Attachments**

House Bill 7

Senate Bill 819

House Bill 2694, Article 2

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Marshall Coover  
Tucker Royall  
Pattie Burnett  
Dennise Braeutigam  
Office of General Counsel  
Charlyne Fritz  
Bruce McAnnally

1 AN ACT

2 relating to the amounts, availability, and use of certain  
3 statutorily dedicated revenue and accounts; reducing or affecting  
4 the amounts or rates of certain statutorily dedicated fees and  
5 assessments; making an appropriation.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Chapter 322, Government Code, is amended by  
8 adding Section 322.024 to read as follows:

9 Sec. 322.024. REDUCTION OF RELIANCE ON AVAILABLE DEDICATED  
10 REVENUE FOR BUDGET CERTIFICATION. (a) In this section, "available  
11 dedicated revenue" means revenue that Section 403.095 makes  
12 available for certification under Section 403.121.

13 (b) The board shall:

14 (1) develop and implement a process to review:

15 (A) new legislative enactments that create  
16 dedicated revenue; and

17 (B) the appropriation and accumulation of  
18 dedicated revenue and available dedicated revenue;

19 (2) develop and implement tools to evaluate the use of  
20 available dedicated revenue for state government financing and  
21 budgeting; and

22 (3) develop specific and detailed recommendations on  
23 actions the legislature may reasonably take to reduce state  
24 government's reliance on available dedicated revenue for the

1 purposes of certification under Section 403.121 as authorized by  
2 Section 403.095.

3 (c) The board shall incorporate into the board's budget  
4 recommendations appropriate measures to reduce state government's  
5 reliance on available dedicated revenue for the purposes of  
6 certification under Section 403.121 as authorized by Section  
7 403.095 and shall include with the budget recommendations plans for  
8 further reducing state government's reliance on available  
9 dedicated revenue for those purposes for the succeeding six years.

10 (d) The board shall consult the comptroller as necessary to  
11 accomplish the objectives of Subsections (b) and (c).

12 SECTION 2. Subchapter F, Chapter 403, Government Code, is  
13 amended by adding Section 403.0956 to read as follows:

14 Sec. 403.0956. REALLOCATION OF INTEREST ACCRUED ON CERTAIN  
15 DEDICATED REVENUE. Notwithstanding any other law, all interest or  
16 other earnings that accrue on all revenue held in an account in the  
17 general revenue fund any part of which Section 403.095 makes  
18 available for certification under Section 403.121 are available for  
19 any general governmental purpose, and the comptroller shall deposit  
20 the interest and earnings to the credit of the general revenue fund.

21 This section does not apply to:

22 (1) interest or earnings on revenue deposited in  
23 accordance with Section 51.008, Education Code;

24 (2) an account that accrues interest or other earnings  
25 on deposits of state or federal money the diversion of which is  
26 specifically excluded by federal law;

27 (3) the lifetime license endowment account; or

1           (4) the game, fish, and water safety account.

2           SECTION 3. Sections 361.013(a) and (f), Health and Safety  
3 Code, are amended to read as follows:

4           (a) Except as provided by Subsections (e) through (i), the  
5 commission shall charge a fee on all solid waste that is disposed of  
6 within this state. The fee is 94 cents [~~\$1.25~~] per ton received for  
7 disposal at a municipal solid waste landfill if the solid waste is  
8 measured by weight. If the solid waste is measured by volume, the  
9 fee for compacted solid waste is 30 [~~40~~] cents per cubic yard and  
10 the fee [~~or~~] for uncompact solid waste is 19 [~~7.25~~] cents per  
11 cubic yard received for disposal at a municipal solid waste  
12 landfill. The commission shall set the fee for sludge or similar  
13 waste applied to the land for beneficial use on a dry weight basis  
14 and for solid waste received at an incinerator or a shredding and  
15 composting facility at half the fee set for solid waste received for  
16 disposal at a landfill. The commission may charge comparable fees  
17 for other means of solid waste disposal that are used.

18           (f) The commission may not charge a fee under Subsection (a)  
19 for source separated [~~yard waste~~] materials that are processed  
20 [~~composted~~] at a composting and mulch processing facility,  
21 including a composting and mulch processing facility located at a  
22 permitted landfill site. The commission shall credit any fee  
23 payment due under Subsection (a) for any material received and  
24 processed [~~converted~~] to compost or mulch product at the facility  
25 [~~for composting through a composting process~~]. Any compost or  
26 mulch product that is produced at a [~~for~~] composting and mulch  
27 processing facility that is [~~not~~] used in the operation of the

1 facility or is disposed of [~~as compost and is deposited~~] in a  
2 landfill is not exempt from the fee.

3 SECTION 4. Sections 361.014(a) and (b), Health and Safety  
4 Code, are amended to read as follows:

5 (a) Revenue received by the commission under Section  
6 361.013 shall be deposited in the state treasury to the credit of  
7 the commission. Of that [~~Half of the~~] revenue, 66.7 percent is  
8 dedicated to the commission's municipal solid waste permitting  
9 programs, [and] enforcement programs, and site remediation  
10 programs, and [~~related support activities and~~] to pay for  
11 activities that will enhance the state's solid waste management  
12 program. The commission shall issue a biennial report to the  
13 legislature describing in detail how the money was spent. The  
14 activities to enhance the state's solid waste management program  
15 may include [~~, including~~]:

16 (1) provision of funds for the municipal solid waste  
17 management planning fund and the municipal solid waste resource  
18 recovery applied research and technical assistance fund  
19 established by the Comprehensive Municipal Solid Waste Management,  
20 Resource Recovery, and Conservation Act (Chapter 363);

21 (2) conduct of demonstration projects and studies to  
22 help local governments of various populations and the private  
23 sector to convert to accounting systems and set rates that reflect  
24 the full costs of providing waste management services and are  
25 proportionate to the amount of waste generated;

26 (3) provision of technical assistance to local  
27 governments concerning solid waste management;

1           (4) establishment of a solid waste resource center in  
2 the commission and an office of waste minimization and recycling;

3           (5) provision of supplemental funding to local  
4 governments for the enforcement of this chapter, the Texas Litter  
5 Abatement Act (Chapter 365), and Chapters 391 and 683,  
6 Transportation Code;

7           (6) conduct of a statewide public awareness program  
8 concerning solid waste management;

9           (7) provision of supplemental funds for other state  
10 agencies with responsibilities concerning solid waste management,  
11 recycling, and other initiatives with the purpose of diverting  
12 recyclable waste from landfills;

13           (8) conduct of research to promote the development and  
14 stimulation of markets for recycled waste products;

15           (9) creation of a state municipal solid waste  
16 superfund, from funds appropriated, for:

17                   (A) the cleanup of unauthorized tire dumps and  
18 solid waste dumps for which a responsible party cannot be located or  
19 is not immediately financially able to provide the cleanup;

20                   (B) the cleanup or proper closure of abandoned or  
21 contaminated municipal solid waste sites for which a responsible  
22 party is not immediately financially able to provide the cleanup;  
23 and

24                   (C) remediation, cleanup, and proper closure of  
25 unauthorized recycling sites for which a responsible party is not  
26 immediately financially able to perform the remediation, cleanup,  
27 and closure;

1 (10) provision of funds to mitigate the economic and  
2 environmental impacts of lead-acid battery recycling activities on  
3 local governments; and

4 (11) provision of funds for the conduct of research by  
5 a public or private entity to assist the state in developing new  
6 technologies and methods to reduce the amount of municipal waste  
7 disposed of in landfills.

8 (b) Of [~~Half of~~] the revenue received by the commission  
9 under Section 361.013, 33.3 percent is dedicated to local and  
10 regional solid waste projects consistent with regional plans  
11 approved by the commission in accordance with this chapter and to  
12 update and maintain those plans. Those revenues shall be allocated  
13 to municipal solid waste geographic planning regions for use by  
14 local governments and regional planning commissions according to a  
15 formula established by the commission that takes into account  
16 population, area, solid waste fee generation, and public health  
17 needs. Each planning region shall issue a biennial report to the  
18 legislature detailing how the revenue is spent. A project or  
19 service funded under this subsection must promote cooperation  
20 between public and private entities and may not be otherwise  
21 readily available or create a competitive advantage over a private  
22 industry that provides recycling or solid waste services.

23 SECTION 5. Section 361.133, Health and Safety Code, is  
24 amended by adding Subsection (c-1) to read as follows:

25 (c-1) Notwithstanding Subsection (c), money in the account  
26 attributable to fees imposed under Section 361.138 may be used for  
27 environmental remediation at the site of a closed battery recycling

1 facility located in the municipal boundaries of a municipality if  
2 the municipality submits to the commission a voluntary compliance  
3 plan for the site and is paying or has paid for part of the costs of  
4 the environmental remediation of the site. This subsection expires  
5 September 30, 2014.

6 SECTION 6. Section 771.0711(c), Health and Safety Code, is  
7 amended to read as follows:

8 (c) Money collected under Subsection (b) may be used only  
9 for services related to 9-1-1 services, including automatic number  
10 identification and automatic location information services, or as  
11 authorized by Section 771.079(c). Not later than the 15th day after  
12 the end of the month in which the money is collected, the commission  
13 shall distribute to each emergency communication district that does  
14 not participate in the state system a portion of the money that  
15 bears the same proportion to the total amount collected that the  
16 population of the area served by the district bears to the  
17 population of the state. The remaining money collected under  
18 Subsection (b) shall be deposited to the 9-1-1 services fee  
19 account.

20 SECTION 7. Section 771.079, Health and Safety Code, is  
21 amended by amending Subsection (c) and adding Subsection (c-1) to  
22 read as follows:

23 (c) Except as provided by Subsection (c-1), money [~~Money~~] in  
24 the account may be appropriated only to the commission for  
25 planning, development, provision, or enhancement of the  
26 effectiveness of 9-1-1 service or for contracts with regional  
27 planning commissions for 9-1-1 service, including for the purposes

1 of:

2 (1) maintaining 9-1-1 service levels while providing  
3 for a transition to a system capable of addressing newer  
4 technologies and capable of addressing other needs;

5 (2) planning and deploying statewide, regional, and  
6 local emergency network systems; and

7 (3) updating geospatial mapping technologies.

8 (c-1) The legislature may appropriate money from the  
9 account to provide assistance to volunteer fire departments under  
10 Subchapter G, Chapter 614, Government Code, only if:

11 (1) the purposes described by Subsection (c) have been  
12 accomplished or are fully funded for the fiscal period for which an  
13 appropriation under this subsection is made; and

14 (2) all other sources of revenue dedicated for the  
15 purposes of providing assistance to volunteer fire departments  
16 under Subchapter G, Chapter 614, Government Code, are obligated for  
17 the fiscal period for which an appropriation under this subsection  
18 is made.

19 SECTION 8. Section 780.003(a), Health and Safety Code, is  
20 amended to read as follows:

21 (a) The designated trauma facility and emergency medical  
22 services account is created as a dedicated account in the general  
23 revenue fund of the state treasury. Money in the account may be  
24 appropriated only to:

25 (1) the department for the purposes described by  
26 Section 780.004; or

27 (2) the Texas Higher Education Coordinating Board for

1 graduate-level:

2 (A) medical education programs; or

3 (B) nursing education programs.

4 SECTION 9. Section 2007.002, Insurance Code, is amended to  
5 read as follows:

6 Sec. 2007.002. ASSESSMENT. The comptroller shall assess  
7 against all insurers to which this chapter applies amounts for each  
8 state fiscal year necessary, as determined by the commissioner, to  
9 collect a combined total equal to the lesser of the total amount  
10 that the General Appropriations Act appropriates from the volunteer  
11 fire department assistance fund account in the general revenue fund  
12 for that state fiscal year and [of] \$30 million [~~for each 12-month~~  
13 period].

14 SECTION 10. Section 81.067(c), Natural Resources Code, is  
15 amended to read as follows:

16 (c) The fund consists of:

17 (1) proceeds from bonds and other financial security  
18 required by this chapter and benefits under well-specific plugging  
19 insurance policies described by Section 91.104(c) that are paid to  
20 the state as contingent beneficiary of the policies, subject to the  
21 refund provisions of Section 91.1091, if applicable;

22 (2) private contributions, including contributions  
23 made under Section 89.084;

24 (3) expenses collected under Section 89.083;

25 (4) fees imposed under Section 85.2021;

26 (5) costs recovered under Section 91.457 or 91.459;

27 (6) proceeds collected under Sections 89.085 and

- 1 91.115;
- 2 (7) interest earned on the funds deposited in the
- 3 fund;
- 4 (8) oil and gas waste hauler permit application fees
- 5 collected under Section 29.015, Water Code;
- 6 (9) costs recovered under Section 91.113(f);
- 7 (10) hazardous oil and gas waste generation fees
- 8 collected under Section 91.605;
- 9 (11) oil-field cleanup regulatory fees on oil
- 10 collected under Section 81.116;
- 11 (12) oil-field cleanup regulatory fees on gas
- 12 collected under Section 81.117;
- 13 (13) fees for a reissued certificate collected under
- 14 Section 91.707;
- 15 (14) fees collected under Section 91.1013;
- 16 (15) fees collected under Section 89.088;
- 17 (16) fees collected under Section 91.142;
- 18 (17) fees collected under Section 91.654;
- 19 (18) costs recovered under Sections 91.656 and 91.657;
- 20 (19) two-thirds of the fees collected under Section
- 21 81.0521;
- 22 (20) fees collected under Sections 89.024 and 89.026;
- 23 (21) legislative appropriations; ~~and~~
- 24 (22) any surcharges collected under Section 81.070;
- 25 and
- 26 (23) fees collected under Section 91.0115.

27 SECTION 11. Section 81.068, Natural Resources Code, is

1 amended to read as follows:

2           Sec. 81.068. PURPOSES [~~PURPOSE~~] OF OIL AND GAS REGULATION  
3 AND CLEANUP FUND. Money in the oil and gas regulation and cleanup  
4 fund may be used by the commission or its employees or agents for  
5 any purpose related to the regulation of oil and gas development,  
6 including oil and gas monitoring and inspections, oil and gas  
7 remediation, and oil and gas well plugging, the study and  
8 evaluation of electronic access to geologic data and surface casing  
9 depths necessary to protect usable groundwater in this state,  
10 alternative fuels programs under Section 81.0681, public  
11 information and services related to those activities, and  
12 administrative costs and state benefits for personnel involved in  
13 those activities.

14           SECTION 12. Subchapter C, Chapter 81, Natural Resources  
15 Code, is amended by adding Section 81.0681 to read as follows:

16           Sec. 81.0681. ALTERNATIVE FUELS PROGRAMS. (a) The  
17 commission shall adopt all necessary rules relating to activities  
18 regarding the use of alternative fuels that are or have the  
19 potential to be effective in improving the air quality, energy  
20 security, or economy of this state.

21           (b) The commission shall use the oil and gas regulation and  
22 cleanup fund to pay for activities relating to the use of  
23 alternative fuels, including direct and indirect costs relating to:

24                   (1) researching all possible uses of liquefied  
25 petroleum gas and natural gas as alternative fuels;

26                   (2) researching, developing, and implementing  
27 marketing, advertising, and informational programs relating to

1 alternative fuels to make alternative fuels more understandable and  
2 readily available to consumers;

3 (3) developing and implementing conservation and  
4 distribution plans to minimize the frequency and severity of  
5 disruptions in the supply of alternative fuels;

6 (4) developing a public information plan that will  
7 provide advisory services relating to alternative fuels to  
8 consumers;

9 (5) developing voluntary participation plans to  
10 promote the use of alternative fuels by federal, state, and local  
11 agencies; and

12 (6) other functions the commission determines are  
13 necessary to add a program established by the commission for the  
14 purpose of promoting the use of liquefied petroleum gas, natural  
15 gas, or other alternative fuels.

16 SECTION 13. Section 91.0115, Natural Resources Code, is  
17 amended by amending Subsection (c) and adding Subsection (d) to  
18 read as follows:

19 (c) The commission shall charge a fee not to exceed \$75, in  
20 addition to the fee required by Subsection (b), for processing a  
21 request to expedite a letter of determination. [~~Money collected~~  
22 ~~under this subsection may be used to study and evaluate electronic~~  
23 ~~access to geologic data and surface casing depths under Section~~  
24 ~~91.020.~~]

25 (d) The fees collected under this section shall be deposited  
26 in the oil and gas regulation and cleanup fund.

27 SECTION 14. Section 151.801(c-1), Tax Code, is amended to

1 read as follows:

2 (c-1) Except as provided by this subsection, the [The]  
3 comptroller may not credit to the Parks and Wildlife Department or  
4 the Texas Historical Commission any amounts under this section that  
5 are in excess of the amounts appropriated to the department or  
6 commission for that biennium[~~, less any other amounts to which the~~  
7 ~~department or commission is entitled~~]. In addition to amounts  
8 appropriated to the Parks and Wildlife Department from the proceeds  
9 described by Subsection (c), the comptroller shall transfer to  
10 appropriate department accounts amounts from those proceeds  
11 sufficient to fund the state contributions for employee benefits of  
12 Parks and Wildlife Department employees whose salaries or wages are  
13 paid from department accounts receiving the transfers.

14 SECTION 15. Subchapter G, Chapter 504, Transportation Code,  
15 is amended by adding Section 504.6012 to read as follows:

16 Sec. 504.6012. ELIMINATION OF DEDICATED REVENUE ACCOUNTS;  
17 REVENUES IN TRUST. (a) Notwithstanding any other provision of this  
18 subchapter, not later than September 30, 2013, the comptroller  
19 shall eliminate all dedicated accounts established for specialty  
20 license plates under this subchapter and shall set aside the  
21 balances of those dedicated accounts so that the balances may be  
22 appropriated only for the purposes intended as provided by the  
23 dedications.

24 (b) On and after September 1, 2013, the portion of a fee  
25 payable under this subchapter that is designated for deposit to a  
26 dedicated account shall be paid instead to the credit of an account  
27 in a trust fund created by the comptroller outside the general

1 revenue fund. The comptroller shall administer the trust fund and  
2 accounts and may allocate the corpus and earnings on each account  
3 only in accordance with the dedications of the revenue deposited to  
4 the trust fund accounts.

5 SECTION 16. Section 39.903, Utilities Code, is amended by  
6 adding Subsection (m) to read as follows:

7 (m) This section expires September 1, 2016.

8 SECTION 17. Subchapter Z, Chapter 39, Utilities Code, is  
9 amended by adding Section 39.9039 to read as follows:

10 Sec. 39.9039. ELIMINATION OF SYSTEM BENEFIT FUND BALANCE.

11 (a) Notwithstanding Section 39.903(b), the commission shall set the  
12 nonbypassable system benefit fund fee at the amount of zero cents  
13 per megawatt hour for the period beginning September 1, 2013, and  
14 ending September 1, 2016.

15 (b) Notwithstanding Section 39.903(e), money in the system  
16 benefit fund may be appropriated:

17 (1) for the state fiscal year beginning September 1,  
18 2013, a program established by the commission to assist low-income  
19 electric customers by providing a reduced rate for the months of  
20 September, 2013, and May through August, 2014, in the manner  
21 prescribed by Section 39.903(h) at a rate of up to 82 percent;

22 (2) for the state fiscal year beginning September 1,  
23 2014, a program established by the commission to assist low-income  
24 electric customers by providing a reduced rate for the months of  
25 September, 2014, and May through August, 2015, in the manner  
26 prescribed by Section 39.903(h) at a rate of up to 15 percent;

27 (3) for the state fiscal year beginning September 1,

1 2015, a program established by the commission to assist low-income  
2 electric customers by providing a reduced rate for the months of  
3 September, 2015, and May through August, 2016, in the manner  
4 prescribed by Section 39.903(h) at a rate of up to 15 percent; and  
5 (4) for customer education programs and  
6 administrative expenses incurred by the commission in implementing  
7 and administering this chapter.

8 (c) This section expires September 1, 2016.

9 SECTION 18. Subchapter I, Chapter 26, Water Code, is  
10 amended by adding Section 26.35745 to read as follows:

11 Sec. 26.35745. REPORT ON CORRECTIVE ACTIONS FOR PETROLEUM  
12 CONTAMINATED SITES AND FEES NECESSARY TO CONCLUDE PROGRAM. (a) The  
13 commission annually shall prepare a report regarding the status of  
14 corrective actions for sites reported to the commission under this  
15 subchapter as having had a release needing corrective action. The  
16 commission must issue the report to the legislature on or before  
17 November 1 of each year.

18 (b) Regarding sites reported to the commission under this  
19 subchapter as having had a release needing corrective action on or  
20 before December 22, 1998, and that remain in the commission's PST  
21 State-Lead Program on September 1, 2013, the report must include:

- 22 (1) the total number of sites;  
23 (2) the total number of sites for which corrective  
24 action is ongoing;  
25 (3) the total number of sites monitored;  
26 (4) the projected costs of the corrective actions;  
27 (5) the projected costs of monitoring;

1           (6) a projected timeline for issuing closure letters  
2 under this subchapter for all of the sites; and

3           (7) for each site, the corrective action activities  
4 proposed and completed during the preceding state fiscal year.

5           (c) Regarding sites reported to the commission under this  
6 subchapter as having had a release needing corrective action after  
7 December 22, 1998, for which the commission has elected to assume  
8 responsibility for undertaking corrective action under this  
9 subchapter, the report must include:

10           (1) the current status of each site;

11           (2) the costs associated with the corrective action  
12 activities performed during the preceding state fiscal year for the  
13 sites;

14           (3) amounts recovered under Section 26.355 related to  
15 the sites; and

16           (4) enforcement actions taken against owners and  
17 operators related to those sites.

18           (d) The commission shall investigate the amount of fees that  
19 would be necessary to cover the costs necessary to conclude the  
20 programs and activities under this subchapter before September 1,  
21 2021. The commission shall include in the annual report under this  
22 section the conclusions of the investigation and the commission's  
23 recommendations regarding the fees and programs and activities.

24           (e) This section expires September 1, 2021.

25           SECTION 19. Effective September 1, 2015, Section 56.095(b),  
26 Education Code, is repealed.

27           SECTION 20. (a) Subchapter I, Chapter 113, Natural

1 Resources Code, is repealed.

2 (b) On the effective date of this Act:

3 (1) the alternative fuels research and education fund  
4 is abolished;

5 (2) any money remaining in the alternative fuels  
6 research and education fund is transferred to the undedicated  
7 portion of the general revenue fund;

8 (3) any claim against the alternative fuels research  
9 and education fund is transferred to the undedicated portion of the  
10 general revenue fund; and

11 (4) any amount required to be deposited to the credit  
12 of the alternative fuels research and education fund shall be  
13 deposited to the credit of the undedicated portion of the general  
14 revenue fund.

15 (c) Any money transferred from the alternative fuels  
16 research and education fund to the undedicated portion of the  
17 general revenue fund that was deposited in the alternative fuels  
18 research and education fund as a gift, grant, or other form of  
19 assistance under former Subchapter I, Chapter 113, Natural  
20 Resources Code, and is encumbered by the specific terms of the gift,  
21 grant, or other form of assistance may be spent only in accordance  
22 with the terms of the gift, grant, or other form of assistance.  
23 Subchapter I, Chapter 113, Natural Resources Code, is continued in  
24 effect for the limited purpose of administering this subsection.

25 SECTION 21. In addition to other appropriations made from  
26 the system benefit fund by the 83rd Legislature, Regular Session,  
27 2013, the amount of \$500 million is appropriated from the system

1 benefit fund to the Public Utility Commission of Texas for the  
2 purposes of Section 39.9039, Utilities Code, as added by this Act,  
3 for the period beginning on the effective date of this Act and  
4 ending August 31, 2014.

5 SECTION 22. EFFECTIVE DATE. Except as otherwise provided  
6 by this Act:

7 (1) this Act takes effect immediately if this Act receives a  
8 vote of two-thirds of all the members elected to each house, as  
9 provided by Section 39, Article III, Texas Constitution; and

10 (2) if this Act does not receive the vote necessary for  
11 immediate effect, this Act takes effect on the 91st day after the  
12 last day of the legislative session.

---

President of the Senate

---

Speaker of the House

I certify that H.B. No. 7 was passed by the House on May 2, 2013, by the following vote: Yeas 146, Nays 1, 2 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 7 on May 24, 2013, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 7 on May 26, 2013, by the following vote: Yeas 143, Nays 4, 2 present, not voting; passed subject to the provisions of Article III, Section 49a, of the Constitution of the State of Texas.

---

Chief Clerk of the House

H.B. No. 7

I certify that H.B. No. 7 was passed by the Senate, with amendments, on May 21, 2013, by the following vote: Yeas 25, Nays 6; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 7 on May 26, 2013, by the following vote: Yeas 25, Nays 6; passed subject to the provisions of Article III, Section 49a, of the Constitution of the State of Texas.

---

Secretary of the Senate

I certify that the amounts appropriated in the herein H.B. No. 7, Regular Session of the 83rd Legislature, are within amounts estimated to be available in the affected fund.

Certified \_\_\_\_\_

---

Comptroller of Public Accounts

APPROVED: \_\_\_\_\_

Date

---

Governor

AN ACT

relating to the disposal of demolition waste from abandoned or nuisance buildings by certain local governments.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (b), Section 361.126, Health and Safety Code, is amended to read as follows:

(b) The commission may issue a permit by rule to authorize the governing body of a county or municipality with a population of 12,000 [~~10,000~~] or less to dispose of demolition waste from a building if the disposal occurs on land that:

(1) the county or municipality owns or controls; and

(2) would qualify for an arid exemption under commission rules.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 819 passed the Senate on March 27, 2013, by the following vote: Yeas 30, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 819 passed the House on May 17, 2013, by the following vote: Yeas 139, Nays 0, three present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

1 AN ACT

2 relating to the continuation and functions of the Texas Commission  
3 on Environmental Quality and abolishing the On-site Wastewater  
4 Treatment Research Council.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 ARTICLE 1. GENERAL PROVISIONS

7 SECTION 1.01. The heading to Chapter 5, Water Code, is  
8 amended to read as follows:

9 CHAPTER 5. TEXAS [~~NATURAL RESOURCE CONSERVATION~~] COMMISSION ON  
10 ENVIRONMENTAL QUALITY

11 SECTION 1.02. Section 5.014, Water Code, is amended to read  
12 as follows:

13 Sec. 5.014. SUNSET PROVISION. The Texas [~~Natural Resource~~  
14 ~~Conservation~~] Commission on Environmental Quality is subject to  
15 Chapter 325, Government Code (Texas Sunset Act). Unless continued  
16 in existence as provided by that chapter, the commission is  
17 abolished and this chapter expires September 1, 2023 [~~2011~~].

18 SECTION 1.03. Subchapter C, Chapter 5, Water Code, is  
19 amended by adding Section 5.061 to read as follows:

20 Sec. 5.061. PROHIBITION ON ACCEPTING CAMPAIGN  
21 CONTRIBUTIONS. A member of the commission may not accept a  
22 contribution to a campaign for election to an elected office. If a  
23 member of the commission accepts a campaign contribution, the  
24 person is considered to have resigned from the office and the office

1 existing dam or spillway. The agreement may include timelines to  
2 achieve compliance with the commission's design criteria and may  
3 authorize deferral of compliance with the criteria, as appropriate.

4 (e-1) The commission shall exempt an owner of a dam located  
5 on private property from meeting requirements related to dam safety  
6 if the dam:

7 (1) at maximum capacity impounds less than 500  
8 acre-feet;

9 (2) has a hazard classification of low or significant;

10 (3) is located in a county with a population of less  
11 than 215,000; and

12 (4) is not located inside the corporate limits of a  
13 municipality.

14 (e-2) Notwithstanding Subsection (e-1), an owner of a dam  
15 shall comply with operation and maintenance requirements  
16 established by commission rule.

17 (e-3) This subsection and Subsections (e-1) and (e-2)  
18 expire August 31, 2015.

19 ARTICLE 2. TRANSFER OF CERTAIN DUTIES TO THE RAILROAD COMMISSION

20 SECTION 2.01. Section 91.011, Natural Resources Code, is  
21 amended to read as follows:

22 Sec. 91.011. CASING. (a) Before drilling into the oil or  
23 gas bearing rock, the owner or operator of a well being drilled for  
24 oil or gas shall encase the well with good and sufficient wrought  
25 iron or steel casing or with any other material that meets standards  
26 adopted by the commission, particularly where wells could be  
27 subjected to corrosive elements or high pressures and temperatures,

1 in a manner and to a depth that will exclude surface or fresh water  
2 from the lower part of the well from penetrating the oil or gas  
3 bearing rock, and if the well is drilled through the first into the  
4 lower oil or gas bearing rock, the well shall be cased in a manner  
5 and to a depth that will exclude fresh water above the last oil or  
6 gas bearing rock penetrated.

7 (b) The commission shall adopt rules regarding the depth of  
8 well casings necessary to meet the requirements of this section.

9 SECTION 2.02. Subchapter B, Chapter 91, Natural Resources  
10 Code, is amended by adding Section 91.0115 to read as follows:

11 Sec. 91.0115. CASING; LETTER OF DETERMINATION. (a) The  
12 commission shall issue, on request from an applicant for a permit  
13 for a well to be drilled into oil or gas bearing rock, a letter of  
14 determination stating the total depth of surface casing required  
15 for the well by Section 91.011.

16 (b) The commission may charge a fee in an amount to be  
17 determined by the commission for a letter of determination.

18 (c) The commission shall charge a fee not to exceed \$75, in  
19 addition to the fee required by Subsection (b), for processing a  
20 request to expedite a letter of determination. Money collected  
21 under this subsection may be used to study and evaluate electronic  
22 access to geologic data and surface casing depths under Section  
23 91.020.

24 SECTION 2.03. Subchapter B, Chapter 91, Natural Resources  
25 Code, is amended by adding Section 91.020 to read as follows:

26 Sec. 91.020. ELECTRONIC GEOLOGIC DATA. The commission  
27 shall work cooperatively with other appropriate state agencies to

1 study and evaluate electronic access to geologic data and surface  
2 casing depths necessary to protect usable groundwater in this  
3 state.

4 SECTION 2.04. Subchapter D, Chapter 91, Natural Resources  
5 Code, is amended by adding Section 91.1015 to read as follows:

6 Sec. 91.1015. GROUNDWATER PROTECTION REQUIREMENTS. The  
7 commission shall adopt rules to establish groundwater protection  
8 requirements for operations that are within the jurisdiction of the  
9 commission, including requirements relating to the depth of surface  
10 casing for wells.

11 SECTION 2.05. Section 27.033, Water Code, is amended to  
12 read as follows:

13 Sec. 27.033. LETTER OF DETERMINATION [~~FROM EXECUTIVE~~  
14 ~~DIRECTOR~~]. A person making application to the railroad commission  
15 for a permit under this chapter shall submit with the application a  
16 letter of determination from the railroad commission [~~from the~~  
17 ~~executive director~~] stating that drilling and using the disposal  
18 well and injecting oil and gas waste into the subsurface stratum  
19 will not endanger the freshwater strata in that area and that the  
20 formation or stratum to be used for the disposal is not freshwater  
21 sand.

22 SECTION 2.06. Section 27.046, Water Code, is amended to  
23 read as follows:

24 Sec. 27.046. LETTER OF DETERMINATION [~~FROM EXECUTIVE~~  
25 ~~DIRECTOR~~]. (a) The railroad commission may not issue a permit  
26 under rules adopted under this subchapter until the railroad  
27 commission issues to the applicant for the permit [~~provides to the~~

1 ~~railroad commission~~] a letter of determination [~~from the executive~~  
2 ~~director~~] stating that drilling and operating the anthropogenic  
3 carbon dioxide injection well for geologic storage or operating the  
4 geologic storage facility will not injure any freshwater strata in  
5 that area and that the formation or stratum to be used for the  
6 geologic storage facility is not freshwater sand.

7 (b) To make the determination required by Subsection (a),  
8 the railroad commission [~~executive director~~] shall review:

9 (1) the area of review and corrective action plans;

10 (2) any subsurface monitoring plans required during  
11 injection or post injection;

12 (3) any postinjection site care plans; and

13 (4) any other elements of the application reasonably  
14 required in order for the railroad commission [~~executive director~~]  
15 to make the determination required by Subsection (a).

16 (c) The railroad commission shall adopt rules to implement  
17 and administer this section.

18 SECTION 2.07. Section 5.701(r), Water Code, is repealed.

19 SECTION 2.08. (a) The Railroad Commission of Texas shall  
20 adopt rules to implement the changes in law made by this article not  
21 later than March 1, 2012.

22 (b) A rule, form, policy, or procedure of the Texas  
23 Commission on Environmental Quality related to the changes in law  
24 made by this article continues in effect as a rule, form, policy, or  
25 procedure of the Railroad Commission of Texas and remains in effect  
26 until amended or replaced by that agency.

27 ARTICLE 3. PUBLIC INTEREST

---

President of the Senate

---

Speaker of the House

I certify that H.B. No. 2694 was passed by the House on April 20, 2011, by the following vote: Yeas 109, Nays 40, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 2694 on May 17, 2011, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2694 on May 28, 2011, by the following vote: Yeas 147, Nays 0, 1 present, not voting.

---

Chief Clerk of the House

H.B. No. 2694

I certify that H.B. No. 2694 was passed by the Senate, with amendments, on May 12, 2011, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2694 on May 28, 2011, by the following vote: Yeas 31, Nays 0.

---

Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

---

Governor

The Texas Commission on Environmental Quality (TCEQ, agency, commission) adopts the amendments to §§330.7, 330.671, 330.673, and 330.675 *without changes*, as published in the January 31, 2014, issue of the *Texas Register* (39 TexReg 466), and therefore, will not be republished.

### **Background and Summary of the Factual Basis for the Adopted Rules**

The commission adopts this rulemaking to amend existing rules pertaining to a permit by rule (PBR) authorization for small counties or municipalities disposing of demolition waste from nuisance or abandoned buildings. The commission also adopts amendments to the existing rules pertaining to the waste disposal fees at municipal solid waste (MSW) disposal facilities, such as landfills and incinerators, and to the waste disposal fee exemption/credit for material diverted from disposal and processed into compost or mulch.

Senate Bill (SB) 819, 83rd Legislature, 2013, effective June 14, 2013, revised the Texas Health and Safety Code (THSC), §361.126. THSC, §361.126 allows the commission to issue a PBR for a county or municipality, with a population of 12,000 people or less, to dispose of demolition waste from properties owned or controlled by the county or municipality with nuisance or abandoned buildings. The population limit was increased from 10,000 to 12,000 people.

House Bill (HB) 7, 83rd Legislature 2013, effective June 14, 2013, revised the THSC, §361.013. THSC, §361.013 requires MSW disposal facilities to submit reports on the amount of solid waste brought into the facility and requires the commission to collect fees on the amount of solid waste disposed of at the facility. The solid waste disposal fee is often referred to as the tipping fee. For disposal of waste by landfilling, the fee is reduced by 25%, from \$1.25 to \$0.94 per ton of solid waste, from \$0.40 to \$0.30 per cubic yard of compacted solid waste, and from \$0.25 to \$0.19 per cubic yard of uncompacted solid waste. For disposal of waste by methods other than landfilling -- incineration, land application, composting, etc. -- the fee is reduced by 25%, from \$0.62 and one-half cent to \$0.47 per ton of solid waste, from \$0.20 to \$0.15 per cubic yard of compacted solid waste, and from \$0.12 and one-half cent to \$0.09 and one-half cent per cubic yard of uncompacted solid waste.

HB 7 also revises the allocation percentage of the tipping fee revenue received by the commission. Revenue received by the commission shall be deposited in the state treasury to credit the commission. Of that revenue, 66.7% shall be dedicated to the commission's Waste Management Account 0549 and the remaining 33.3% to the commission's Solid Waste Disposal Fee Account 5000. The previous allocation percentage was a 50%/50% split between the two accounts.

HB 7 revises THSC, §361.013 to expand the tipping fee exemption - from exemption of source-separated yard waste to exemption of source-separated material. Additionally, material processed into compost or mulch may receive a fee credit. Previously only material processed into compost could receive the credit.

### **Section by Section Discussion**

#### *§330.7, Permit Required*

The commission adopts the amendment to §330.7(i), which would authorize a county or municipality with 12,000 people or less, located in an arid-exempt area, to dispose of demolition waste from nuisance and abandoned buildings under a PBR.

The nuisance and abandoned building must have been acquired by the county or municipality by means of bankruptcy, tax delinquency, or condemnation. Disposal of the demolition waste must occur on property that is owned or controlled by the county or municipality. The disposal property must qualify for an arid exemption with less than or equal to 25 inches of average annual precipitation based on data from the nearest official precipitation recording station for the most recent 30-year period or on another method approved by the executive director. To be authorized to dispose of the solid waste under this PBR, the county or municipality must adhere to the conditions set forth in §330.7(i)(1) and (2).

The population limit was increased from 10,000 people to 12,000 people. This allows additional counties and municipalities a less costly, environmentally secure means of disposing of waste from nuisance and abandoned buildings. The PBR was adopted in 2012 to address a short-term issue facing small West Texas communities.

*§330.671, Purpose and Applicability*

The commission adopts the amendment to §330.671(b)(1) relating to the tipping fee exemption or credit on material that is processed into compost or mulch. The amendment replaces "source separated yard waste composted at a composting facility, including a composting facility located at a permitted landfill..." with "source separated material processed at a composting or mulch processing facility, including a composting or mulch processing facility located at a permitted landfill...." The amendment removes the language defining "source separated yard waste." The amendment replaces "...and converted to compost product for composting through a composting process" to "...and processed to compost or mulch product at the facility." The amendment replaces "any compost product for composting that is not used as compost and is deposited in a landfill..." with "any compost or mulch product that is produced at a composting or mulch processing facility that is used in the operation of the facility or is disposed of in a landfill...."

Facilities that divert source-separated material to composting or mulching facilities are exempt from the tipping fee based on the amount of material diverted. Previously the language only authorized the exemption for the diversion of source-separated yard waste processed into compost. These revisions allow a wider variety of source-separated material to be exempted from tipping fees. Yard waste and brush continue to qualify for the fee exemption when diverted. Clean wood material can now qualify for this exemption. Clean wood material is considered wood or wood materials, including roots, or vegetation with intact rootballs, sawdust, pallets, and manufacturing rejects. Clean wood material does not include wood that has been treated, coated or painted by materials such as, but not limited to, paints, varnishes, wood preservatives, or other chemical products. Clean wood material also does not include demolition material, where the material is contaminated by materials such as, but not limited to, paint or other chemicals, glass, electrical wiring, metal and sheetrock. The definition of source-separated yard waste was removed from the rule to reduce the limitations on the type of material diverted.

Facilities that divert non source-separated material from the landfill and process the material into compost or mulch, can be credited half of the tipping fee when the facility demonstrates to the commission that the material has been processed for beneficial use. In order to qualify for the tipping fee credit, the processed material cannot be disposed of in a landfill, used in the operation of the landfill, or be used as daily cover. If the

material is used in such a way, the facility will not receive the credit. Additionally, the material received must be processed into compost or mulch at the landfill facility to qualify for the fee credit.

Including mulch processing with composting for both the fee exemption and fee credit allows disposal facilities greater flexibility in diverting material away from landfills.

Although not defined in this chapter, mulch is defined in §332.2(33), as ground, course, woody yard trimmings and clean wood material. Mulch is normally used around plants and trees to retain moisture and suppress weed growth, and is intended for use on top of soil or other growing media rather than being incorporated into the soil or growing media. Mulch does not include wood that has been systemically killed using herbicides.

*§330.673, Fees*

The commission adopts the amendment to §330.673, relating to the fee, collected by the commission, on solid waste disposed of at a MSW disposal facility. The fee rate for solid waste disposed of by landfilling is reduced from \$1.25 to \$0.94 per ton, from \$0.40 to \$0.30 per compacted cubic yard, and from \$0.25 to \$0.19 per uncompacted cubic yard. If the landfill operator calculates the amount of waste received based upon the population equivalent method, the fee is reduced from \$1.25 to \$0.94 per ton.

For MSW facilities that dispose of solid waste by means other than landfilling, the fee, collected by the commission, is reduced from \$0.62 and one-half cent to \$0.47 per ton, from \$0.20 to \$0.15 per compacted cubic yard, and from \$0.12 and one-half cent to \$0.09 and one-half cent per uncompacted cubic yard. If the facility operator calculates the amount of waste received based upon the population equivalent method, the fee is reduced from \$0.62 and one-half cent to \$0.47 per ton.

These changes will reduce the overall amount of fees collected. However, due to current allocations and the increase in distribution to Fund 0549 from 50% to 66.7%, appropriations from these funds for the 2014 - 2015 biennium will be funded.

*§330.675, Reports*

The commission adopts the amendment to §330.675 relating to the reports submitted to the commission by MSW disposal facilities on the amount of solid waste diverted and disposed of. The amendment replaces "yard waste converted" with "material processed" and replaces "to compost or product for composting" with "to compost or mulch product." These changes are made to coincide with the amendments made in §330.671. The changes in §330.671 are made to provide a fee exemption or credit for a greater variety of materials that are diverted. The changes to the report forms are needed to ensure the correct amount of diverted material is reported to the commission.

### **Final Regulatory Impact Determination**

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rule does not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule, the specific intent of which is 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. The adopted rulemaking is intended to implement amendments to statutory provisions. The authority to issue a PBR for a county or municipality with a population of 10,000 people or less, to dispose of demolition waste from properties controlled by the county or municipality with nuisance or abandoned buildings, is increased to allow this authorization for populations of 12,000 or less. The fee due to the state from landfill operators for the amount of solid waste disposed at landfills is reduced by 25%. A provision is added to require the commission to issue biennial reports on how that fee money is spent. The existing exemption from these fees for composting source-separated yard waste is expanded to exempt composting or mulching source separated material. The proposal does not meet the definition of "major environmental rule" because the rulemaking action is not specifically intended to increase protections of the environment or reduce risks to human health from environmental exposure.

Furthermore, the adoption does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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 4) adopts a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rules do not meet any of these applicability requirements: there are no corresponding standards set by federal law and the adoptions are either allowed or required by state law; the adopted amendment does not exceed an express requirement of state law: the rule does not exceed an express 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; and, the commission does not adopt the rule solely under the general powers of the agency, but rather under the authority of THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste; THSC, §361.024, which provides the commission with rulemaking authority; THSC, §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, THSC, §361.013 and §361.014, which require the commission to charge fees and report on how the fees are spent. Therefore, the commission does not adopt the rule solely under the commission's general powers.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. Comments were received during the comment period, but no comments addressed the regulatory impact analysis determination.

### **Takings Impact Assessment**

The commission evaluated the adopted rulemaking and performed an assessment of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The specific intent of the adopted amendments are to reduce fees the state charges landfills and to require the commission to report how fees are spent; authorize the commission to issue a PBR for a county or municipality with a population of 12,000 people or less, to dispose of demolition waste from properties controlled by the county or municipality with nuisance or abandoned buildings; and, expand the existing exemption from these fees for composting or mulching source separated material. The amendments do not impose a burden on a recognized real property

interest and therefore do not constitute a taking. The promulgation of the adopted rulemaking is neither a statutory nor a constitutional taking of private real property by the commission. Specifically, the adopted rulemaking does not affect a landowner's rights in a recognized private real property interest because this rulemaking neither: burdens (constitutionally) or restricts or limits the owner's right to the property that would otherwise exist in the absence of this rulemaking; nor would it reduce its value by 25% or more beyond that value which would exist in the absence of the adopted rules. Therefore, the adopted rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

### **Consistency with the Coastal Management Program**

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the §§330.671, 330.673, and 330.675 amendments are consistent with CMP goals and policies because the rulemaking is a fee rule, which is a

procedural mechanism for paying for commission programs; will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies.

The commission determined that the amendment in §330.7 will not affect any coastal natural resource areas because the rule only affect counties outside the CMP area and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. Comments were received during the comment period, but no comments addressed the coastal management program.

### **Public Comment**

The commission held a public hearing on February 18, 2014, in Austin. No comments were provided at the public hearing. The comment period closed on March 3, 2014.

The commission received comments from the City of Houston (COH) and the Lone Star Chapter of the Solid Waste Association of North America (TXSWANA). Their comments

opposed the reduction in the solid waste disposal fee and the reduction in the allocation percentage to Account 5000.

### **Response to Comments**

#### **Comment**

TXSWANA commented that the solid waste disposal fee should not be reduced by 25%.

#### **Response**

**THSC, §361.013, as amended by HB 7, requires the commission to charge a fee on all solid waste that is disposed of within the state. As stated in THSC, §361.013(a), the fee is \$0.94 per ton received, \$0.30 per compacted cubic yard and \$0.19 per uncompacted cubic yard. The commission is required to implement the statute. No change was made in response to this comment.**

#### **Comment**

The COH and TXSWANA commented that the reduction in the allocation percentage to Account 5000 would negatively affect the commission's Regional Solid Waste Grants Program (RSWGP) and funds available for local solid waste reduction programs.

#### **Response**

**THSC, §361.014(b), as amended by HB 7, states that 33.3% of the solid waste disposal fee revenue is dedicated to local and regional solid waste projects.**

**The RSWGPs awards grants to the 24 council of governments to fund the solid waste projects. The RSWGPs appropriation amount for each biennium is set by the legislature. The commission is required to implement the statute. No change was made in response to this comment.**

## **SUBCHAPTER A: GENERAL INFORMATION**

### **§330.7**

#### **Statutory Authority**

The amendment is adopted under the authority of: Texas Health and Safety Code (THSC), §361.011, Commission's Jurisdiction: Municipal Solid Waste, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste; THSC, §361.013, Solid Waste Disposal and Transportation Fees; THSC, §361.014, Use of Solid Waste Fee Revenue; THSC, §361.024, Rules and Standards, which provides the commission with rulemaking authority; THSC, §361.061, Permits: Solid Waste Facility, 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, THSC, §361.126, Disposal of Demolition Waste from Abandoned or Nuisance Building.

The adopted amendments implement THSC, §§361.013, 361.014, 361.061 and 361.126.

#### **§330.7. Permit Required.**

(a) Except as provided in §§330.9, 330.11, 330.13, or 330.25 of this title (relating to Registration Required; Notification Required; Waste Management Activities Exempt from Permitting, Registration, or Notification; and Relationship with County Licensing

System), no person may cause, suffer, allow, or permit any activity of storage, processing, removal, or disposal of any solid waste unless such activity is authorized by a permit or other authorization from the commission. In the event this requirement is violated, the executive director may seek recourse against not only the person that stored, processed, or disposed of the waste but also against the generator, transporter, owner or operator, or other person who caused, suffered, allowed, or permitted its waste to be stored, processed, or disposed. No person may commence physical construction of a new municipal solid waste (MSW) management facility, a vertical expansion, or a lateral expansion without first having submitted a permit application in accordance with §§330.57, 330.59, 330.61, 330.63, and 330.65 of this title (relating to Permit and Registration Applications for Municipal Solid Waste Facilities; Contents of Part I of the Application; Contents of Part II of the Application; Contents of Part III of the Application; and Contents [contents] of Part IV of the Application, respectively) and received a permit from the commission, except as provided otherwise in this section.

(b) A separate permit is required for the storage, transportation, or handling of used oil mixtures collected from oil/water separators. Any person that intends to conduct such activity shall comply with the regulatory requirements of Chapter 324 of this title (relating to Used Oil Standards).

(c) Permits by rule may be granted for persons that compact or transport waste in enclosed containers or enclosed transportation units to a Type IV facility.

(1) A permit by rule is granted for a generator operating a stationary compactor that is only used to compact waste to be disposed of at a Type IV landfill, if all of the following conditions are met.

(A) The generator submits the following information and any requested additional information on forms provided by the executive director:

(i) generator contact person, company name, mailing address, street address, city, state, ZIP code, and telephone number;

(ii) contract renewal date, if applicable;

(iii) rated compaction capability in pounds per cubic yard;

(iv) container size;

(v) description of waste stream to enter compactor;

(vi) receiving MSW Type IV disposal facility name, permit number, mailing address, street address, city, state, ZIP code, telephone number, and contact person; and

(vii) a certification from the generator that states the following: I, (name) \_\_\_\_\_, (title) \_\_\_\_\_ of (company name) \_\_\_\_\_, located at (street address) \_\_\_\_\_ in (city) \_\_\_\_\_, certify that the contents of the compactor located at the location stated herein are free of and shall be maintained free of putrescible, hazardous, infectious, and any other waste not allowed in an MSW Type IV landfill.

(B) The generator submits a \$75 fee along with the claim for the permit by rule.

(C) The generator complies with the operational requirements of §330.215 of this title (relating to Requirements for Stationary Compactors).

(D) A stationary compactor permit by rule expires after one year.

The generator must submit an annual renewal fee in the amount of \$75. Failure to timely pay the annual fee eliminates the option of disposal of these wastes at a Type IV landfill until the generator claims a new or renewed permit by rule.

(2) A permit by rule is granted for transporters using enclosed containers or enclosed vehicles to collect and transport brush, construction or demolition wastes, and rubbish along special collection routes to MSW Type IV landfill facilities if all of the following conditions are met.

(A) The owner or operator seeking a special collection route permit by rule submits to the executive director the following information and any requested additional information on forms provided by the executive director:

(i) name of owner and operator, mailing address, street address, city, state, ZIP code, name and title of a contact person, and telephone number;

(ii) receiving MSW Type IV disposal facility name, permit number, mailing address, street address, city, state, ZIP code, telephone number, and contact person;

(iii) information on each transportation unit, including, at a minimum, license number, vehicle identification number, year model, make, capacity in cubic yards, and rated compaction capability in pounds per cubic yard;

(iv) route information, which shall include as a minimum the collection frequency, the day of the week the route is to be collected, and the day and time span within which the route is to arrive at the MSW Type IV landfill;

(v) a description of the wastes to be transported;

(vi) an alternative contingency disposal plan to include alternate trucks to be used or alternative disposal facilities; and

(vii) a signed and notarized certification from the owner or operator that states the following: I, (name) \_\_\_\_\_, (title) \_\_\_\_\_, of \_\_\_\_\_ operating in \_\_\_\_\_ County, certify that the contents of the vehicles described above will be free of putrescible, household, hazardous, infectious, or any other waste not allowed in an MSW Type IV landfill.

(B) The transporter submits a \$100 per vehicle fee along with the claim for a permit by rule.

(C) The transporter documents each load delivered with a trip ticket form provided by the executive director, and provides the trip ticket to the landfill operator prior to discharging the load.

(D) A special collection route permit by rule expires after one year. The owner or operator must submit an annual renewal fee in the amount of \$100 per vehicle. Failure to timely pay the annual fee eliminates the option of disposal of these wastes at a Type IV landfill until the owner or operator claims a new or renewed permit by rule.

(E) This paragraph does not apply if the waste load is from a single collection point that is a stationary compactor authorized in accordance with paragraph (1) of this subsection.

(3) Revision requirements for stationary compactor permits or special collection route permits by rule identified in paragraphs (1) and (2) of this subsection are as follows.

(A) An update must be submitted if any information within the original permit by rule submittal changes.

(B) A submittal to update an existing permit by rule must include all of the same documentation required for an original permit by rule submittal.

(d) A major permit amendment, as defined by §305.62 of this title (relating to Amendments), is required to reopen a Type I, Type IAE, Type IV, or Type IVAE MSW facility permitted by the commission or any of its predecessor or successor agencies that has either stopped accepting waste, or only accepted waste in accordance with an emergency authorization, for a period of five years or longer. The MSW facilities covered by this subsection may not be reopened to accept waste again unless the permittee demonstrates compliance with all applicable requirements of the Resource Conservation and Recovery Act, Subtitle D and the implementing Texas state regulations. If an MSW facility was subject to a contract of sale on January 1, 2001, the scope of any public hearing held on the permit amendment required by this subsection is limited to land use compatibility, as provided by §330.57(a) of this title. This subsection does not apply to any MSW facility that has received a permit but never received waste, or that received an approved Subtitle D permit modification before September 1, 2001.

(e) A permit by rule is granted for an animal crematory that meets the following criteria. For facilities that do not meet all the requirements of this subsection, the owner or operator shall submit a permit application under §§330.57, 330.59, 330.61, 330.63,

and 330.65 of this title and obtain a permit. To qualify for a permit by rule under this subsection, the following requirements must be met.

(1) General prohibitions. An animal crematory facility shall comply with §330.15(a) of this title (relating to General Prohibitions).

(2) Incineration limits. Incineration of carcasses shall be limited to the conditions specified in §106.494 of this title (relating to Pathological Waste Incinerators (Previously SE 90)). The facility shall not accept animal carcasses that weigh more than the capacity of the largest incinerator at the facility and shall not dismember any carcasses during processing.

(3) Ash control. Ash disposal must be at an authorized facility unless the ash is returned to the animal owner or sent to a pet cemetery. Ash shall be stored in an enclosed container that will prevent release of the ash to the environment. There shall be no more than 2,000 pounds of ash stored at an animal crematory at any given time.

(4) Air pollution control. Air emissions from the facility shall not cause or contribute to a condition of air pollution as defined in Texas Clean Air Act, §382.003. All animal crematories, prior to construction or modification, must have an air permit issued under Chapter 116 of this title (relating to Control of Air Pollution by Permits for

New Construction or Modification), or qualify for a permit by rule under §106.494 of this title.

(5) Fire protection. The facility shall prepare, maintain, and follow a fire protection plan. This fire protection plan shall describe fire protection resources (a local fire department, fire hydrants, fire extinguishers, water tanks, water well, etc.), and employee training and safety procedures. The fire protection plan shall comply with local fire codes.

(6) Storage limits. Carcasses must be incinerated within two hours of receipt, unless stored at or below a temperature of 29 degrees Fahrenheit. Storage of carcasses shall be in a manner that minimizes the release of odors. Storage of carcasses shall be limited to the lesser of 3,200 pounds or the amount that can be incinerated at the maximum loading rate for the incinerators at the facility in a two-day period.

(7) Unauthorized waste. Only carcasses or animal parts, with any associated packaging, shall be processed. Carcasses shall not be accepted in packaging that includes any chlorinated plastics. Carcasses or animal parts that are either hazardous waste or medical waste are prohibited.

(8) **Cleaning.** Storage and processing units must be properly cleaned on a routine basis to prevent odors and the breeding of flies.

(9) **Nuisance prevention.** The facility shall be designed and operated in a manner so as to prevent nuisance conditions, including, but not limited to, dust from ashes, disease vectors, odors, and liquids from spills, from being released from the property boundary of the authorized facility.

(10) **Diseased animals.** The facility shall be equipped with appropriate protective equipment and clothing for personnel handling diseased animals that may be received at the facility. Facility owners or operators must inform customers and local veterinarians of the need to identify diseased animals for the protection of personnel handling the animals.

(11) **Buffer zone.** An animal crematory, including unloading and storage areas, constructed after March 2, 2003, must be at least 50 feet from the property boundary of the facility.

(12) **Operating hours.** A crematory shall operate within the time frames allowed by §111.129 of this title (relating to Operating Requirements).

(13) Documentation. The operator of an animal crematory shall document the carcasses' weight, date and time when carcasses are received, and when carcasses are loaded into the incinerator. A separate entry in the records for loading into the incinerator is not required if a carcass is loaded within two hours of receipt. This information will be maintained in records on site.

(14) Breakdown. The facility is subject to §330.241 of this title (relating to Overloading and Breakdown).

(15) Records management. The owner or operator must retain records as follows:

(A) maintain a copy of all requirements of this subsection that apply to the facility;

(B) maintain records for the previous consecutive 12-month period containing sufficient information to demonstrate compliance with all requirements of this subsection;

(C) keep all required records at the facility; and

(D) make the records available upon request to personnel from the commission or from local governments with jurisdiction over the facility.

(16) Fees. An animal crematory facility authorized under this section is exempt from the fee requirements of Subchapter P of this chapter (relating to Fees and Reporting).

(17) Other requirements. No other requirements under this chapter are applicable to a facility that meets all of the requirements of this subsection.

(f) A permit by rule is granted for a dual chamber incinerator if the owner or operator complies with §106.491 of this title (relating to Dual-Chamber Incinerators).

(g) A permit by rule is granted for an air curtain incinerator if the owner or operator complies with §106.496 of this title (relating to Air Curtain Incinerators). An air curtain incinerator may not be located within 300 feet of an active or closed MSW landfill unit boundary.

(h) A standard air permit is granted for facilities that comply with Subchapter U of this chapter (relating to Standard Air Permits for Municipal Solid Waste Landfill Facilities and Transfer Stations).

(i) A permit by rule is granted for a period of up to five years to a county or municipality with a population of 12,000 [10,000] people or less to dispose of demolition waste from properties with nuisance or abandoned buildings.

(1) Requirements. The following conditions must be met.

(A) Form submittal. The county or municipality submits a form provided by the commission to the executive director for review and approval before construction begins.

(B) Notice to regional office. The county or municipality notifies the applicable commission regional office of the intent to dispose of waste under this authorization at least 48 hours prior to accepting the first load of waste.

(C) Facility location. The location where disposal will occur:

(i) is owned or controlled by the county or municipality, and

(ii) receives less than or equal to 25 inches average annual precipitation as determined from precipitation data for the nearest official precipitation

recording station for at least the most recent 30-year reporting period or by another method approved by the executive director.

(D) Sources of waste. The properties on which nuisance and abandoned buildings are located have been acquired by the county or municipality by means of bankruptcy, tax delinquency, or condemnation, and the previous owners are not financially capable of paying the costs of the disposal of demolition waste at a permitted solid waste disposal facility, including transportation of the waste to the facility.

(E) Waste acceptance.

(i) Prior to demolition, structures are surveyed and abated, if required, for asbestos-containing materials in accordance with 25 TAC Chapter 295, Subchapter C (relating to Texas Asbestos Health Protection).

(ii) The facility may accept non-regulated asbestos-containing materials (non-RACM) for disposal. The wastes are placed on the active working face and covered at the end of the operating day with at least six inches of soil. Under no circumstances may any of the material containing non-RACM be placed on a

surface that is subject to vehicular traffic or disposed of by any other means by which the material could be crumbled into a friable state.

(iii) The facility may accept regulated asbestos-containing materials (RACM) if the following conditions are met.

(I) The county or municipality notifies the executive director on a form provided by the commission in accordance with subparagraph (A) of this paragraph.

(II) All waste trenches are identified as receiving RACM, and deed records required under subparagraph (Q) of this paragraph include an indication that the waste trench(es) received RACM.

(III) RACM is transported and received at the facility in tightly closed and unruptured containers or bags or wrapped with at least six-mil polyethylene.

(IV) Bags or containers holding RACM are carefully unloaded and placed in the final disposal location. RACM is then covered immediately

with at least six inches of soil. Care is taken during unloading and placement of RACM and during application of the cover so that the bags or containers are not ruptured.

(iv) Waste is limited to the abandoned or nuisance buildings and materials from the property on which the buildings are located. All waste disposed under this authorization must meet the limitations of §330.5(a)(2) of this title (relating to Classification of Municipal Solid Waste Facilities) and may not include waste prohibited under §330.15(e) of this title.

(F) Access control. Access to the disposal facility is controlled by means of fences, other artificial barriers, natural barriers, or a combination of these methods, and includes a locking gate.

(G) Buffers and easements. The county or municipality maintains a minimum distance of 50 feet as a buffer between the permit boundary and waste storage, processing and disposal areas. No disposal occurs within a utility or pipeline easement or within 25 feet of the center of a utility or pipeline easement.

(H) Below-grade placement. Waste is placed only below grade. The top of final cover is placed at pre-existing grade or up to three feet above pre-existing

grade to ensure that natural drainage patterns are not altered and ponding of water over waste is prevented.

(I) Weekly cover. Waste is covered at least weekly with six inches of earthen material not previously mixed with waste, or by tarps. Use of tarps as cover is limited to a seven-day period after which the county or municipality must replace the tarp with either waste or a six-inch layer of earthen material not previously mixed with waste. Tarps may not be used in place of soil cover requirements relating to non-RACM and RACM in subparagraph (E)(ii) and (iii) of this paragraph. Any trench that has received waste but will be inactive for more than 180 days receives intermediate cover in accordance with subparagraph (J) of this paragraph, or final cover in accordance with subparagraph (P) of this paragraph.

(J) Intermediate cover. Waste is covered, including any soil weekly cover, with twelve inches of well compacted earthen material not previously mixed with waste.

(K) Maximum volume. The design waste disposal volume is less than 2.5 million cubic meters in accordance with §106.534(3) of this title (relating to Municipal Solid Waste Landfills and Transfer Stations).

(L) Facility signs. At all entrances through which waste is received, the facility conspicuously displays a sign with letters at least three inches in height providing a statement that the facility is "NOT FOR PUBLIC USE," an emergency 24-hour contact number that reaches an individual with the authority to obligate the facility at all times that the facility is not in operation, and the local emergency fire department number.

(M) Stormwater and contaminated water. The county or municipality constructs berms to divert the 25-year/24-hour storm event from entering excavations containing waste. Water that has contacted waste is managed as contaminated water and disposed at an authorized treatment facility.

(N) Reporting. The county or municipality, while not required to provide quarterly reporting, provides annual reporting in accordance with the annual reporting provisions of §330.675(a) of this title (relating to Reports).

(O) Reauthorization. Before reaching the permit by rule term limit of five years, the county or municipality may request reauthorization under the permit by rule by submitting a form that is current at the time of reauthorization, provided by the commission in accordance with subparagraph (A) of this paragraph, to the executive director at least 14 days before the end of the permit term.

(P) Final cover. The following conditions are met.

(i) Within 60 days after a trench reaches its capacity or waste deposition activities are complete in a trench, the county or municipality installs final cover over waste in the trench. Final cover shall be composed of no less than two feet of soil. The first 18 inches or more of cover shall be of compacted clayey soil, classification sand clay (SC) or low plasticity clay (CL) as defined in the "Unified Soils Classification System" developed by the United States Army Corps of Engineers, and placed and compacted in layers of no more than six inches to minimize the potential for water infiltration. A high plasticity clayey (CH) soil may be used; however, this soil may experience excessive cracking and shall therefore be covered by a minimum of 12 inches of topsoil to retain moisture. Other types of soil may be used with prior written approval from the executive director. The final six inches of cover shall be of suitable topsoil that is capable of sustaining native plant growth and shall be seeded or sodded as soon as practicable following the application of the final cover in order to minimize erosion.

(ii) The trench final cover procedures listed in clause (i) of this subparagraph are completed before facility closure, as described in subparagraph (Q) of this paragraph. If these procedures cannot be performed before the permit by rule term limit is reached, the county or municipality submits a current application form for

reauthorization of the permit by rule to the executive director at least 14 days before the end of the permit term.

(Q) Facility closure. The county or municipality notifies the executive director and the applicable regional office at least 60 days before the anticipated closure date of the facility. Within ten days after closure, submit to the executive director by registered mail a certified copy of an "affidavit to the public" in accordance with the requirements of §330.19 of this title (relating to Deed Recordation). In addition, record a certified notation of the deed to the facility property, or on some other instrument that is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that the land has been used as a landfill facility and use of the land is restricted. Submit a certified deed to the executive director.

(2) Other provisions. The following provisions also apply to this authorization.

(A) Processing. This permit by rule also authorizes the processing of waste destined for the disposal unit. Authorized processing is limited to volume reduction, such as chipping or grinding, but not burning. Processing must occur within the permit boundary and may not occur within a buffer zone or right-of-way. Tires,

RACM and non-RACM may not be processed. If required, the county or municipality must obtain authorization for air emissions resulting from this processing.

(B) Fees. Waste that is disposed under this authorization is not subject to the fee requirements of Subchapter P of this chapter.

(C) Other requirements. No other requirements under this chapter are applicable to a facility that meets all the requirements of this subsection.

**SUBCHAPTER P: FEES AND REPORTING**

**§§330.671, 330.673, 330.675**

**Statutory Authority**

The amendments are adopted under the authority of: Texas Health and Safety Code (THSC), §361.011, Commission's Jurisdiction: Municipal Solid Waste, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste; THSC, §361.024, Rules and Standards, which provides the commission with rulemaking authority; THSC, §361.061, Permits; Solid Waste Facility, 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; THSC, §361.013, Solid Waste Disposal and Transportation Fees; and, THSC, §361.014, Use of Solid Waste Fee Revenue.

The adopted amendments implement THSC, §361.013 and §361.014.

**§330.671. Purpose and Applicability.**

(a) Purpose.

(1) Fees. The commission is mandated by Texas Health and Safety Code, §361.013, to collect a fee for solid waste disposed of within the state, and from

transporters of solid waste who are required to register with the state. Persons desiring to transport or deliver waste in enclosed containers or enclosed vehicles to a Type IV municipal solid waste management facility are subject to special route permit application and maintenance fees set forth and described in §330.103 of this title (relating to Collection and Transportation Requirements). The fee amount may be raised or lowered in accordance with spending levels authorized by the legislature.

(2) Industrial solid waste and hazardous waste fees. The assessment of fees for the generation, treatment, storage, or disposal of industrial solid waste or hazardous waste is governed by regulations contained in Chapter 335, Subchapter J of this title (relating to Hazardous Waste Generation, Facility and Disposal Fee [Fees] System).

(3) Reports. The commission requires reports in order to track the amount of waste being stored, treated, processed, or disposed of in the state, to track the amount of processing and disposal capacity and reserve (future) disposal capacity, and to enable equitable assessment and collection of fees.

(b) Applicability.

(1) Fees. Each operator of a municipal solid waste disposal facility or process for disposal is required to pay a fee to the agency based upon the amount of waste received for disposal. For the purpose of this subchapter, "waste received for disposal" means the total amount of the waste (measured in tons or cubic yards, or determined by the population equivalent method specified in §330.675(a)(3) of this title (relating to Reports) received by a disposal facility at the gate, excluding only those wastes that are recycled or exempted from payment of fees under this subchapter or by law. For the purpose of these sections, landfills, waste incinerators, and sites used for land treatment or disposal of wastes, sites used for land application of sludge or similar waste for beneficial use, composting facilities, and other similar facilities or activities are determined to be disposal facilities or processes. Recycling operations or facilities that process waste for recycling are not considered disposal facilities. Source-separated material processed [Source separated yard waste composted] at a composting or mulch processing facility, including a composting or mulch processing facility located at a permitted landfill, is exempt from the fee requirements set forth and described in these sections. [For the purpose of these sections, source separated yard waste is defined as leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscape maintenance and land-clearing operations that has been separated and has not been commingled with any other waste material at the point of generation.] The agency will credit any fee payment due under this subchapter for any material received and

processed [converted] to compost or mulch product at the facility [for composting through a composting process]. Any compost or mulch product that is produced at a [for] composting or mulch processing facility that is [not] used in the operation of the facility or is disposed of [as compost and is deposited] in a landfill or used as landfill daily cover is not exempt from the fee.

(2) Industrial solid waste and hazardous waste fees. A fee for disposal of an industrial solid waste or hazardous waste in a municipal solid waste disposal facility shall be assessed at the rates prescribed under the authority of Chapter 335, Subchapter J of this title. If no fee under Chapter 335, Subchapter J of this title, is applicable to the disposal of an industrial solid waste or hazardous waste, then such waste shall be assessed a fee under this chapter for the disposal of solid waste in a municipal solid waste facility.

(3) Reports. All registered or permitted facility operators are required to submit reports to the executive director covering the types and amounts of waste processed or disposed of at the facility or process location; other pertinent information necessary to track the amount of waste generated and disposed of, recovered, or recycled; and the amount of processing or disposal capacity of facilities. The information requested on forms provided by the executive director shall not be considered confidential or classified information unless specifically authorized by law, and refusal

to submit the form complete with accurate information by the applicable deadline shall be considered as a violation of this section and subject to appropriate enforcement action and penalty.

(4) Interest penalty. Owners or operators of a facility failing to make payment of the fees imposed under this subchapter when due shall be assessed penalties and interest in accordance with Chapter 12 of this title (relating to Payment of Fees).

**§330.673. Fees.**

(a) Landfilling. Each operator of a facility in Texas that disposes of municipal solid waste (MSW) by means of landfilling, including landfilling of incinerator ash, is required to pay a fee to the agency for all waste received for disposal. The fee rate for waste disposed of by landfilling is dependent upon the reporting units used.

(1) Fee rates. For purposes of this subsection, uncompacted waste means any waste that is not a liquid or a sludge, has not been mechanically compacted by a collection vehicle, has not been driven over by heavy equipment prior to collection, or has not been compacted subsequent or prior to collection by any type of mechanical device other than small, in-house, compactor devices owned and/or operated by the generator of the waste. Compacted waste is a liquid, sludge, or similar waste or any

waste that has been reduced in volume by a collection vehicle or by any other means including, but not limited to, dewatering, composting, incineration, and similar processes.

(A) Tons. For waste reported in tons, the fee rate is \$0.94 [\$1.25] per ton received for disposal.

(B) Cubic yards (compacted). For waste reported in compacted cubic yards, the fee rate is \$0.30 [\$0.40] per cubic yard received for disposal.

(C) Cubic yards (uncompacted). For waste reported in uncompacted cubic yards, the fee rate is \$0.19 [\$0.25] per cubic yard received for disposal.

(2) Measurement options. The volume or weight reported on the quarterly solid waste summary report must be consistent with the volume or weight of the waste received for disposal, as defined in §330.671(b)(1) of this title (relating to Purpose and Applicability). The volume or weight of the waste received for disposal shall be determined prior to disposal or processing of the waste.

(A) The recommended method for measuring and reporting waste received at the gate is in short tons. The facility operator must accurately measure and report the number of cubic yards or tons of waste received at the gate.

(i) The fee for waste reported in short tons will be calculated by the executive director at an amount equal to \$0.94 [\$1.25] per ton.

(ii) The fee for compacted waste reported in cubic yards will be calculated by the executive director at an amount equal to \$0.30 [\$0.40] per cubic yard.

(iii) The fee for uncompacted waste reported in cubic yards will be calculated by the executive director at an amount equal to \$0.19 [\$0.25] per cubic yard.

(B) If a landfill operator chooses to report the amount of waste received utilizing the population equivalent method authorized in §330.675(a)(3) of this title (relating to Reports), the fee for such waste received shall be calculated by the executive director at an amount equal to \$0.94 [\$1.25] per ton.

(3) Fee calculation. The fee shall be calculated by the executive director using information obtained from the quarterly solid waste summary report. The total cubic yards or tonnage reported to the executive director in the quarterly solid waste summary report shall be derived from gate tickets (weight or volume) or invoices, except in the case of operators who are authorized to report utilizing the population equivalent method in §330.675(a)(3) of this title, and records of recycled materials or any other information deemed relevant by the executive director. A billing statement will be generated quarterly by the executive director and forwarded to the applicable permittee/registrant or a designated representative.

(4) Fee due date. All solid waste fees shall be due within 30 days of the date the payment is requested.

(5) Method of payment. The required fee shall be submitted in the form of a check or money order made payable to the Texas Commission on Environmental Quality and delivered or mailed to the return address designated by the executive director in the billing statement distributed quarterly.

(6) Penalties. Failure of the landfill operator to submit the required fee payment by the due date shall be sufficient cause for the commission to revoke the landfill permit and authorization to process or dispose of waste. The commission may

assess interest penalties for late payment of fees and may also assess penalties (fines) in accordance with Texas Water Code, §7.051 (relating to Administrative Penalty), or take any other action authorized by law to secure compliance.

(7) Exemptions.

(A) A fee will not be charged on solid waste resulting from a public entity's effort to protect the public health and safety of the community from the effects of a natural or man-made disaster or from structures that have been contributing to drug trafficking or other crimes if the disposal facility at which that solid waste is offered for disposal has donated to a municipality, county, or other political subdivision the cost of disposing of that waste.

(B) A fee only for the amount determined necessary to reimburse MSW regulatory activities will be charged federal facilities. Prior to the fourth MSW billing quarter following the close of each regular session of the Texas State Legislature, the Texas Commission on Environmental Quality's chief financial officer will determine the percentage of the MSW disposal fee that represents reimbursement for regulatory implementation of the state MSW program and the percentage that represents a state tax. The percentage determination shall be reported to the MSW Permits Section for use in determining fees owed by federal facilities. The MSW Permits Section shall grant

federal facilities a credit on their MSW fees equal to the percentage of the fee determined to be a state tax. The credit shall be applied to each billing quarter beginning with the first billing quarter of the state fiscal year.

(b) Incinerators and processes for disposal. Each operator of a facility that disposes of or processes MSW for disposal by means other than landfilling is required to pay a fee to the agency for all waste received for processing or disposal. Facilities and/or processes included in this category include, but are not limited to, incineration; composting; application of sludge, septic tank waste, or shredded waste to the land; and similar facilities or processes. Not included as a process for disposal is land application of waste that has already been properly composted in one of the facilities named.

(1) Fee rates. For purposes of this subsection, uncompacted waste means any waste that is not a liquid or a sludge, has not been mechanically compacted by a collection vehicle, has not been driven over by heavy equipment prior to collection, or has not been compacted subsequent or prior to collection by any type of mechanical device other than small, in-house, compactor devices owned and/or operated by the generator of the waste. Compacted waste is a liquid, sludge, or similar waste or any waste that has been reduced in volume by a collection vehicle or by any other means including, but not limited to, dewatering, composting, incineration, and similar processes.

(A) Tons. For waste reported in tons, the fee rate is \$0.47 [\$0.62 and one-half cent] per ton received.

(B) Cubic yards (compacted). For waste reported in compacted cubic yards, the fee rate is \$0.15 [\$0.20] per cubic yard received.

(C) Cubic yards (uncompacted). For waste reported in uncompacted cubic yards, the fee rate is \$0.09 [\$0.12] and one-half cent per cubic yard received.

(2) Measurement options. The volume or weight reported on the quarterly solid waste summary report must be consistent with the volume or weight of the waste received for disposal, as defined in §330.671(b)(1) of this title. The volume or weight of the waste received for disposal shall be determined prior to disposal or processing of the waste.

(A) The recommended method for measuring and reporting waste received at the gate is in short tons. The operator must accurately measure and report the number of cubic yards or tons of waste received.

(i) The fee for waste reported in short tons will be calculated by the executive director at an amount equal to \$0.47 [\$0.62 and one-half cent] per ton.

(ii) The fee for compacted waste reported in cubic yards will be calculated by the executive director at an amount equal to \$0.15 [\$0.20] per cubic yard.

(iii) The fee for uncompacted waste reported in cubic yards will be calculated by the executive director at an amount equal to \$0.09 [\$0.12] and one-half cent per cubic yard.

(B) If a facility operator chooses to report the amount of waste received utilizing the population equivalent method authorized in §330.675(a)(3) of this title, the fee shall be calculated by the executive director at an amount equal to \$0.47 [\$0.62 and one-half cent] per ton.

(3) Fee calculation. The fee shall be calculated by the executive director using information obtained from the quarterly solid waste summary report. The total cubic yards or tonnage reported to the executive director in the quarterly solid waste summary report shall be derived from gate tickets (weight or volume) or invoices, except in the case of operators who are authorized to report utilizing the population equivalent

method in §330.675(a)(3) of this title, and records of recycled materials or any other information deemed relevant by the executive director. A billing statement will be generated quarterly by the executive director and forwarded to the applicable permittee/registrant or a designated representative.

(4) Fee due date. All solid waste fees shall be due within 30 days of the date the payment is requested.

(5) Method of payment. The required fee shall be submitted in the form of a check or money order made payable to the Texas Commission on Environmental Quality and delivered or mailed to the return address designated by the executive director in the billing statement distributed quarterly.

(6) Penalties. Failure of the facility or process operator to submit the required fee payment by the due date shall be sufficient cause for the commission to revoke the permit or registration and authorization to process or dispose of waste. The commission may assess interest penalties for late payment of fees and may also assess penalties (fines) in accordance with Texas Water Code, §7.051, or take any other action authorized by law to secure compliance.

(7) Exemptions. A fee will not be charged on solid waste resulting from a public entity's effort to protect the public health and safety of the community from the effects of a natural or man-made disaster or from structures that have been contributing to drug trafficking or other crimes if the disposal facility at which that solid waste is offered for disposal has donated to a municipality, county, or other political subdivision the cost of disposing of that waste.

(c) Facilities and processes not for disposal. Facilities or processes not included in the scope of subsections (a) and (b) of this section shall be considered as "facilities and processes not for disposal." Facilities and processes not for disposal are those facilities that are permitted or registered independently from landfill, incinerator, or disposal processing operations and include, but are not limited to, such facilities or processes as transfer stations, shredders, balers, methane extractors, etc. Facilities and processes not for disposal are not required to pay a fee to the agency, but are required to submit reports.

**§330.675. Reports.**

(a) Disposal facilities and processes.

(1) Municipal Solid Waste Fee Report frequency, report form, and report information.

(A) Report frequency. Quarterly, each disposal facility or process operator shall report to the executive director the information requested on the report form for the appropriate reporting period including the amount of source-separated material processed [source separated yard waste converted] to compost or mulch product [product for composting]. Annually, the operator shall submit a summary of the information to show the yearly totals and year-end status of the facility or process, as requested on the report form, for the appropriate reporting period. An operator shall file a separate report for each facility that has a unique permit, permit application number, or registration number.

(B) Report form. The report shall be on a form furnished by the executive director or reproduced from a form furnished by the executive director or by an electronic form or format furnished by the executive director. Forms reproduced by the facility operator are not recommended because each report form for each reporting period will have two unique numbers on each form. One number will specifically identify the facility for which the report is made; the other number will specifically identify the individual form. To use the wrong form, or the form intended for a different reporting period, will automatically make the data incorrect for that facility report. The

operator will receive one form from the executive director for each facility or process prior to the due date. The operator must assure that the data entered on the form are applicable for the particular facility and period for which the data are reported.

(C) Report information. In addition to a statement of the amount of waste received for processing or disposal, the report shall contain other information requested on the form, including the facility operator's name, address, and phone number; the permit number, permit application number, or registration number; the facility type, size, and capacity; and other information the executive director may request.

(2) Reporting units. The amount of waste received for processing or disposal shall be reported in short tons (2,000 pounds) or in cubic yards as received (compacted or uncompacted) at the gate. If accounting of the waste is recorded in cubic yards, then separate accounting must be made for waste that comes to the facility in open vehicles or without compaction, and waste that comes to the facility in compactor vehicles. If scales are not utilized and accounting of the waste received is in cubic yards, gallons, or drums then those volumetric units may be converted to tons for reporting purposes, using the conversion factors set forth in subparagraphs (A) and (B) of this paragraph.

(A) General weight/volume conversion factors for various types of waste shall be as follows:

(i) one ton = 2,000 pounds;

(ii) one gallon = 7.5 pounds (grease trap waste);

(iii) one gallon = 8.5 pounds (wastewater treatment plant sludge or septage);

(iv) one gallon = 9.0 pounds (grit trap waste); and

(v) one drum = 55 gallons.

(B) Conversion factors to be used for waste transport vehicles relative to waste volume and weight in vehicles shall be as follows:

(i) one cubic yard = 400 pounds (no compaction);

(ii) one cubic yard = 666.66 pounds (medium compaction);

and

(iii) one cubic yard = 800 pounds (heavy compaction).

(3) Use of population equivalent. In determining the amount of waste deposited in a landfill serving less than 5,000 people or the amount of waste processed for disposal at a processing facility serving less than 5,000 people, the owner/operator may use the number of tons calculated or derived from the population served by the facility in lieu of maintaining records of the waste deposited at the facility. The amount of waste shall be calculated on the basis of one ton per person per year. The report shall document the population served by the facility and reflect any changes since the previous report.

(4) Reporting units for beneficial land use application sites. Wastewater treatment plant sludge and septage received for disposal at registered beneficial use land application sites in vacuum or closed tank trucks may be reported in dry weight equivalent units, provided the site operator either produces satisfactory documentation indicating the percent solids present in the received waste materials or uses the dry weight/volume conversion factors set forth in subparagraphs (A) and (B) of this paragraph:

(A) one gallon = 0.5 pounds (sludge - dry weight equivalent); and

(B) one gallon = 0.3 pounds (septage - dry weight equivalent).

(5) Report due date. The required quarterly solid waste summary report shall be submitted to the executive director not later than 20 days following the end of the fiscal quarter for which the report is applicable. The fiscal year begins on September 1, and concludes on August 31.

(6) Method of submission. The required report shall be delivered or mailed to the agency to the return address designated by the executive director in the billing statement distributed quarterly.

(7) Penalties. Failure of the facility or process operator to submit the required report by the due date shall be sufficient cause for the commission to revoke the permit or registration and authorization to process or dispose of waste. The commission may assess interest penalties for late payment of fees and may also assess penalties (fines) in accordance with Texas Water Code, §7.051 (relating to Administrative Penalty) or take any other action authorized by law to secure compliance.

(b) Facilities and processes not for disposal. Facilities and processes not for disposal (as defined in §330.673(c) of this title (relating to Fees)) are subject to reporting requirements, but are not required to pay a fee.

(1) Municipal Solid Waste Annual Summary Report frequency, report form, and report information.

(A) Report frequency. Annually, each facility or process operator shall report to the executive director the information requested on the report form for the appropriate reporting period. An operator shall file a separate report for each facility that has a unique permit, permit application number, or registration number.

(B) Report form. The form of the report shall be in accordance with subsection (a)(1)(B) of this section.

(C) Report information. The information in the report shall be in accordance with subsection (a)(1)(C) of this section.

(2) Reporting units. The units used in reporting shall be in accordance with subsection (a)(2) of this section.

(3) Use of population equivalent. The use of the population equivalent method of reporting waste received or processed shall be in accordance with subsection (a)(3) of this section.

(4) Report due date. The required annual report shall be submitted to the executive director not later than 45 days following the calendar year for which the report is applicable.

(5) Method of submission. The required report shall be delivered or mailed to the agency to the return address designated by the executive director in the billing statement distributed quarterly.

(6) Penalties. Failure of the facility or process operator to submit the required report by the due date shall be sufficient cause for the commission to revoke the permit or registration and authorization to process or dispose of waste. The commission may assess interest penalties for late payment of fees and may also assess penalties (fines) in accordance with Texas Water Code, §7.051 or take any other action authorized by law to secure compliance.

The Texas Commission on Environmental Quality (TCEQ, agency, commission) adopts the repeal of §§339.1 - 339.3 *without changes*, as published in the January 31, 2014, issue of the *Texas Register* (39 TexReg 478), and therefore, will not be republished.

### **Background and Summary of the Factual Basis for the Adopted Rules**

The TCEQ Sunset Legislation, House Bill (HB) 2694, Article 2, passed by the 82nd Legislature, 2011, and signed by the governor, transferred from the TCEQ to the Railroad Commission of Texas (RRC) duties relating to the protection of groundwater resources from oil and gas associated activities. Specifically, HB 2694, Article 2, amended the Texas Natural Resources Code to revise §91.011, add §§91.0115, 91.020, and 91.1015, and amended the Texas Water Code (TWC), §27.033. On September 1, 2011, the law transferred from the commission to the RRC those duties pertaining to the responsibility of preparing groundwater protection advisory/recommendation letters. Since the transfer, the RRC has been responsible for providing surface casing and/or groundwater protection recommendations for oil and gas activities under the jurisdiction of the RRC.

The TCEQ Surface Casing Program and staff transferred to the RRC on September 1, 2011. The RRC's Surface Casing Program was renamed the Groundwater Advisory Unit, and is now located in the William B. Travis Building, 1701 North Congress, Austin.

The RRC has adopted amendments to their regulations to reflect the changes in law made under HB 2694, Article 2. The rules in Chapter 339 authorized the commission to provide groundwater protection letters to the RRC for use in various activities and applications before the RRC and to collect a fee for the expedited processing of a request for a groundwater protection recommendation. Because the commission no longer provides the groundwater protection letters to the RRC, the commission's rules in Chapter 339 are no longer necessary. The RRC adopted amendments to their regulations on May 24, 2013. These regulations became effective January 1, 2014. Therefore, the commission adopts the repeal of §§339.1 - 339.3 in their entirety.

### **Section by Section Discussion**

#### *§339.1, Purpose*

The commission adopts the repeal of §339.1. This section authorized the executive director to provide groundwater protection letters to the RRC. With the transfer of this function from the commission to the RRC in HB 2694, this section is no longer required.

#### *§339.2, Applicability*

The commission adopts the repeal of §339.2. This section explained the applicability for the types of applications for which a recommendation to the RRC was provided on depth or depths to usable-quality groundwater. With the transfer of this function from the commission to the RRC in HB 2694, this section is no longer required.

*§339.3, Groundwater Protection Letter Requests, Expedited Processing, and Fee*

The commission adopts the repeal of §339.3. This section authorized the executive director to establish procedures and to collect fees for the processing of applications for groundwater protection recommendations. With the transfer of this function from the commission to the RRC in HB 2694, this section is no longer required.

**Final Regulatory Impact Determination**

The commission reviewed the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is 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. The adoption does not meet the definition of "major environmental rule" because the rulemaking action is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Instead, the rulemaking action is intended to repeal Chapter 339, which is no longer

necessary because the functions and authorization provided in the rules were transferred by statute from the commission to the RRC.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received.

### **Takings Impact Assessment**

The commission evaluated this rulemaking action and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The adopted action implements legislative requirements in HB 2694, 82nd Legislature, 2011, which transferred duties from the commission to the RRC relating to the preparation of groundwater protection letters for certain activities and applications before the RRC. The repeal of these rules would be neither a statutory nor a constitutional taking of private real property. The adopted repeals do not affect a landowner's rights in private real property because this rulemaking action does not burden (constitutionally), nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations.

### **Consistency with the Coastal Management Program**

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received.

### **Public Comment**

The commission held a public hearing on February 18, 2014. The comment period closed on March 3, 2014. No comments were received.

**§§339.1 - 339.3**

**Statutory Authority**

The repeals are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC, and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeals implement House Bill 2694, 82nd Legislature, 2011.

**[§339.1. Purpose.]**

[This chapter authorizes the executive director to provide groundwater protection recommendation letters to the Railroad Commission of Texas for use in processing applications. This chapter also establishes the fee for the expedited processing of requests for groundwater protection recommendation letters.]

**[§339.2. Applicability.]**

[This chapter applies to Texas Commission on Environmental Quality groundwater protection recommendation letters required by Railroad Commission of

Texas (RRC) rules or Texas Water Code, §27.033, except that §339.3(b) and (c) of this title (relating to Groundwater Protection Letter Requests, Expedited Processing, and Fee) does not apply to letters related to drilling and use of disposal wells permitted by the RRC. The executive director provides these letters to applicants for authorizations from the RRC. The letters contain a recommendation to the RRC on the depth, or depths, that usable-quality groundwater should be isolated or protected in oil and gas operations. This chapter also applies to the expedited processing of requests for these letters and sets fees for expedited processing as authorized by Texas Water Code, §5.701.]

**[§339.3. Groundwater Protection Letter Requests, Expedited Processing, and Fee.]**

[(a) The applicant shall submit a request for a groundwater protection recommendation letter on a form approved by the executive director. The form must contain all information required by the executive director before a request will be processed.]

[(b) The executive director shall establish procedures for expedited processing of requests for groundwater protection recommendation letters. Requests for expedited

groundwater protection recommendation letters shall be processed within four business days.]

[(c) The fee for expedited processing of a request for a groundwater protection recommendation letter is \$75 and must be in the form of a check, money order, cashier's check, or electronic funds transfer made payable to the Texas Commission on Environmental Quality. The fee must be paid before the request will be processed.]

(h) [(i)] Adopted [Copies of adopted] instructional materials in a specialized format [Braille, large type, or an electronic file] that are requested by a parent who is blind or visually impaired shall be furnished without cost by the state. Materials in the medium needed by the parent may be requisitioned by an instructional materials coordinator. Requests for electronic files will be filled by the TEA after the parent signs and the TEA receives a statement, through the appropriate school district, promising that the parent will safeguard the security of the files and observe all current copyright laws, including those that forbid reproduction of the files and their transfer to other parties. All specialized instructional material formats [Braille and large type instructional materials] and electronic files with educational content that have been provided to parents who are blind or visually impaired must be returned to the local school district at the end of the school year for reuse.

(i) Publishers that offer electronic instructional materials (e.g., CD-ROMs, DVDs, or Web-based instructional materials) for adoption shall offer these materials in an accessible format in accordance with the technical standards of the Federal Rehabilitation Act, Section 508.

(j) Publishers that offer Web-based instructional materials for adoption shall ensure that these materials conform to the Web Content Accessibility Guidelines 2.0, Level AA.

(k) Adopted instructional materials that are not compliant with the technical standards of the Federal Rehabilitation Act, Section 508, or do not conform to the Web Content Accessibility Guidelines 2.0, Level AA, will be removed from the EMAT system and will not be available for order through the TEA.

(l) Producers that enter into a contract with the TEA for the production and distribution of specialized instructional material formats shall provide the instructional materials to students with disabilities at the same time other students in the same school district receive print instructional materials.

§66.1313. Bilingual Instructional Materials.

(a) A school district shall purchase with the district's instructional materials allotment or otherwise acquire instructional materials for use in bilingual education classes.

(b) Bilingual education is defined in Chapter 89, Subchapter BB, of this title (relating to Commissioner's Rules Concerning State Plan for Educating English Language Learners).

(c) The calculation used for adjusting the instructional materials allotment for bilingual education student enrollment is based on actual bilingual enrollment [the Texas Education Code, §42.153]. The calculation will take into account funds used for Texas Education Agency administrative purposes and juvenile justice alternative education programs and include adjustments for bilingual education student enrollment and high-enrollment growth.

§66.1325. Reimbursements of Funds to Local Education Agencies.

(a) A school district or an open-enrollment charter school may be reimbursed for allowable instructional materials allotment (IMA) expenditures.

(b) Reimbursements will be funded through a district's or charter school's IMA as funds become available.

(c) A district or charter school may receive a reimbursement only if the district or charter school:

(1) submits a request through the EMAT system;

(2) has a zero IMA balance or the cost of an allowable product or service according to §66.1307 of this title (relating to Instruc-

tional Materials Allotment) is more than the district's or charter's available IMA balance at the time the request is submitted; and

(3) has received approval from the Texas Education Agency (TEA) through the EMAT system.

(d) The TEA will establish a reimbursement process for school districts and open-enrollment charter schools.

§66.1327. Delayed Publisher Payment Option.

(a) A school district or an open-enrollment charter school may requisition and receive state-adopted instructional materials before instructional materials allotment (IMA) funds for those materials are available.

(b) The total cost of materials included in a district's or charter school's requisition(s) pursuant to this section may not exceed 80% of a school district's or open-enrollment charter school's expected IMA for the subsequent fiscal year.

(c) When a district or charter school submits a requisition for instructional materials under this section, the Texas Education Agency (TEA) will expend a district's or charter school's existing IMA balance before applying the delayed payment option.

(d) The TEA will make payment for any remaining balance for a district's or charter school's order under this section as the IMA funds become available.

(e) The TEA will prioritize payment for requisitions under this section over reimbursement of purchases made directly by a school district or an open-enrollment charter school.

(f) Publishers may decline orders for which payments could be delayed. A publisher's decision to decline an order under this section shall affect all of that publisher's orders for which payments could be delayed. Publishers may not selectively decline orders from individual districts or charter schools.

(g) Texas Government Code, Chapter 2251, does not apply to requisitions placed under this section.

(h) Texas Education Code, §31.151, does apply to orders placed under this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 16, 2014.

TRD-201400156

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: March 2, 2014

For further information, please call: (512) 475-1497

◆ ◆ ◆  
**TITLE 30. ENVIRONMENTAL QUALITY**

**PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

**CHAPTER 330. MUNICIPAL SOLID WASTE**

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§330.7, 330.671, 330.673, and 330.675.

#### Background and Summary of the Factual Basis for the Proposed Rules

The commission is proposing this rulemaking to amend existing rules pertaining to a permit by rule (PBR) authorization for small counties or municipalities disposing of demolition waste from nuisance or abandoned buildings. The commission also proposes amendments to the existing rules pertaining to the waste disposal fees at municipal solid waste (MSW) disposal facilities, such as landfills and incinerators, and to the waste disposal fee exemption/credit for material diverted from disposal and processed into compost or mulch.

Senate Bill (SB) 819, 83rd Legislature, 2013, effective June 14, 2013, revised the Texas Health and Safety Code (THSC), §361.126. This section allows the commission to issue a PBR for a county or municipality, with a population of 12,000 people or less, to dispose of demolition waste from properties controlled by the county or municipality with nuisance or abandoned buildings. The population limit was increased from 10,000 to 12,000 people.

House Bill (HB) 7, 83rd Legislature, 2013, effective June 14, 2013, revised the THSC, §361.013. This statute requires MSW disposal facilities to submit reports on the amount of solid waste brought into the facility and allows the commission to collect fees on the amount of solid waste disposed of at the facility. The solid waste disposal fee is often referred to as the tipping fee. For disposal of waste by landfilling, the fee is reduced by 25%, from \$1.25 to \$0.94 per ton of solid waste, from \$0.40 to \$0.30 per cubic yard of compacted solid waste, and from \$0.25 to \$0.19 per cubic yard of uncompacted solid waste. For disposal of waste by methods other than landfilling--incineration, land application, composting, etc.--the fee is reduced by 25%, from \$0.62 and one-half cent to \$0.47 per ton of solid waste, from \$0.20 to \$0.15 per cubic yard of compacted solid waste, and from \$0.12 and one-half cent to \$0.09 and one-half cent per cubic yard of uncompacted solid waste.

HB 7 also revises the allocation percentage of the tipping fee revenue received by the commission. Revenue received by the commission shall be deposited in the state treasury to credit the commission. Of that revenue, 66.7% shall be dedicated to the commission's Waste Management Account 0549 and the remaining 33.3% to the commission's Solid Waste Disposal Fee Account 5000. The previous allocation percentage was a 50%/50% split between the two accounts.

HB 7 revises THSC, §361.013 to expand the tipping fee exemption--from exemption of source-separated yard waste to exemption of source-separated material. Additionally, material processed into compost or mulch may receive a fee credit. Previously, only material processed into compost could receive the credit.

#### Section by Section Discussion

##### *§330.7, Permit Required*

The commission proposes to amend §330.7(i), which would authorize a county or municipality with 12,000 people or less, located in an arid-exempt area, to dispose of demolition waste from nuisance and abandoned buildings under a PBR.

The nuisance and abandoned building must have been acquired by the county or municipality by means of bankruptcy, tax delinquency, or condemnation. Disposal of the demolition waste must occur on property that is owned or controlled by the county or municipality. The disposal property must qualify for an arid exemption with less than or equal to 25 inches of average annual precipitation based on data from the nearest official precipitation recording station for the most recent 30-year period or on another method approved by the executive director. To be authorized to dispose of the solid waste under this PBR, the county or municipality must adhere to the conditions set forth in §330.7(i)(1) and (2).

The population limit was increased from 10,000 people to 12,000 people. This allows additional counties and municipalities a less costly, environmentally secure means of disposing of waste from nuisance and abandoned buildings. The PBR was adopted in 2012 to address a short-term issue facing small West Texas communities. This proposed amendment does not extend the five-year term of the PBR.

##### *§330.671, Purpose and Applicability*

The commission proposes to amend §330.671(b)(1), relating to the tipping fee exemption or credit on material that is processed into compost or mulch. The amendment replaces "source separated yard waste composted at a composting facility, including a composting facility located at a permitted landfill" with "source-separated material processed at a composting or mulch processing facility, including a composting or mulch processing facility located at a permitted landfill." The amendment removes the language defining "source separated yard waste". The amendment replaces "and converted to compost product for composting through a composting process" to "and processed to compost or mulch product at the facility." The amendment replaces "any compost product for composting that is not used as compost and is deposited in a landfill" with "any compost or mulch product that is produced at a composting or mulch processing facility that is used in the operation of the facility or is disposed of in a landfill."

Facilities that divert source-separated material to composting or mulching facilities are exempt from the tipping fee based on the amount of material diverted. Previously, the language only authorized the exemption for the diversion of source-separated yard waste processed into compost. These revisions allow a wider variety of source-separated material to be exempted from tipping fees. Yard waste and brush continue to qualify for the fee exemption when diverted. Clean wood material can now qualify for this exemption. Clean wood material is considered wood or wood materials, including roots, or vegetation with intact root-balls, sawdust, pallets, and manufacturing rejects. Clean wood material does not include wood that has been treated, coated or painted by materials such as, but not limited to, paints, varnishes, wood preservatives, or other chemical products. Clean wood material also does not include demolition material, where the material is contaminated by materials such as, but not limited to, paint or other chemicals, glass, electrical wiring, metal and Sheetrock. The definition of source-separated yard waste was removed from the rule to reduce the limitations on the type of material diverted.

Facilities that divert non-source-separated material from the landfill and process the material into compost or mulch can be credited half of the tipping fee when the facility demonstrates to the commission that the material has been processed for beneficial use. In order to qualify for the tipping fee credit, the processed material cannot be disposed of in a landfill, used in

the operation of the landfill, or be used as daily cover. If the material is used in such a way, the facility will not receive the credit. Additionally, the material received must be processed into compost or mulch at the landfill facility to qualify for the fee credit.

Including mulch processing with composting for both the fee exemption and fee credit allows disposal facilities greater flexibility in diverting material away from landfills. Although not defined in this chapter, mulch is defined in §332.2(33), as ground, coarse, woody yard trimmings and clean wood material. Mulch is normally used around plants and trees to retain moisture and suppress weed growth, and is intended for use on top of soil or other growing media rather than being incorporated into the soil or growing media. Mulch does not include wood that has been systemically killed using herbicides.

#### §330.673, Fees

The commission proposes to amend §330.673, relating to the fee, collected by the commission, on solid waste disposed of at an MSW disposal facility. The fee rate for solid waste disposed of by landfilling is reduced from \$1.25 to \$0.94 per ton, from \$0.40 to \$0.30 per compacted cubic yard, and from \$0.25 to \$0.19 per uncompacted cubic yard. If the landfill operator calculates the amount of waste received based upon the population equivalent method, the fee is reduced from \$1.25 to \$0.94 per ton.

For MSW facilities that dispose of solid waste by means other than landfilling, the fee collected by the commission is reduced from \$0.62 and one-half cent to \$0.47 per ton, from \$0.20 to \$0.15 per compacted cubic yard, and from \$0.12 and one-half cent to \$0.09 and one-half cent per uncompacted cubic yard. If the facility operator calculates the amount of waste received based upon the population equivalent method, the fee is reduced from \$0.62 and one-half cent to \$0.47 per ton.

These changes will reduce the overall amount of fees collected. However, due to current allocations and the increase in distribution into Fund 0549 from 50% to 66.7%, appropriations from these funds for the 2014-2015 biennium will be funded.

#### §330.675, Reports

The commission proposes to amend §330.675, relating to the reports submitted to the commission by MSW disposal facilities on the amount of solid waste diverted and disposed of. The amendment replaces "yard waste converted" with "material processed" and replaces "to compost or product for composting" with "to compost or mulch product." These changes are made to coincide with the amendments made in §330.671. The changes in §330.671 are made to provide a fee exemption or credit for a greater variety of materials that are diverted. The changes to the report forms are needed to ensure the correct amount of diverted material is reported to the commission.

#### Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rules are in effect fiscal implications which may be significant are anticipated for the agency and for units of local government that own or operate solid waste disposal facilities or who have nuisance or abandoned buildings, but not for other units of state or local government as a result of the administration or enforcement of the proposed rules.

The proposed rules would: 1) Provide a PBR authorization for small counties or municipalities disposing of demolition waste

from nuisance or abandoned buildings; 2) Reduce by 25% waste disposal fees assessed to MSW disposal facilities; and 3) Provide waste disposal fee exemptions or credits for material diverted from landfills and processed into compost or mulch.

#### Tipping Fee Reduction

The proposed rules implement provisions in HB 7, 83rd Legislature, 2013. HB 7 reduced the solid waste disposal fee, commonly known as the tipping fee, by 25%. For waste disposed at an MSW landfill, the fee is reduced from \$1.25 to \$0.94 per ton, from \$0.40 to \$0.30 per compacted cubic yard, and from \$0.25 to \$0.19 per uncompacted cubic yard.

HB 7 also changed the distribution of tipping fee revenue, as it is deposited into two agency accounts, the Waste Management Account 0549 and the Municipal Solid Waste Disposal Account 5000. HB 7 requires that 66.7% of the revenue collected by the commission be dedicated to Account 0549 and the remaining 33.3% be dedicated to Account 5000. Previously, the fee revenue distribution was split evenly between the two accounts at 50%. Account 5000 is projected to experience a decrease in revenue in an amount estimated to be \$8.5 million each year for the five-year period covered by this fiscal note due to the reallocation of revenue. The net effect to the revenue deposited to Account 0549 is not expected to be significant even though revenue to Account 0549 is increased by 16.7%, because the total fee revenue collected is decreased by 25%, and 66% of the 25% reduction (the portion of the reduction allocated to Account 0549) is approximately 16.5%.

Funding in Account 5000 is dedicated to local and regional solid waste projects consistent with regional plans approved by the commission in accordance with THSC, Chapter 361. The current fund balance in Account 5000 in combination with the revenue stream under the proposed rules is projected to be sufficient to fund local and regional solid waste projects at current levels for the five-year period covered by this fiscal note and into the foreseeable future.

There are 120 landfills and 77 processing facilities owned or operated by local governments that would be impacted by the proposed rules. These local governments are anticipated to realize a decrease in tipping fees paid to the state. They may be able to pass these savings on to their customers who use the landfills. It is not known how many local government facilities would choose to decrease fees assessed to their customers. Conversely, local governments that dispose of waste at privately owned facilities may see a reduction in the fees they pay to the privately owned facilities if the owner or operator chooses to reduce fees based upon the 25% reduction in the tipping fee that is paid to TCEQ.

#### Mulch Processing

The proposed rules also implement HB 7 provisions that apply to source-separated materials. The proposed rules would provide that any source-separated material (not only yard waste material) is exempt from the tipping fee if the material is diverted from the disposal facility and processed into compost or mulch. In addition, disposal facilities that divert non-source-separated material and process the material into compost or mulch may receive a credit on their tipping fee. Previously, the language only allowed a credit on material diverted to compost.

These changes allow a greater variety of material to be diverted away from a landfill and processed for beneficial use. Staff does not expect an impact to agency tipping fee revenue from the mulch processing revisions. Many facilities that divert mate-

rial already process the material into compost or mulch and the agency has already been allowing facilities to divert material into compost or mulch as this allows more material to be diverted away from a landfill. Diverting material results in additional landfill space, which extends the life of the landfill. Therefore, the agency does not expect facilities to start diverting material or increase the amount diverted based solely on this rule change. There are many factors including equipment costs, land availability, transportation costs, and sales market for finished compost or mulch products that an entity must consider before diverting material.

Based on data collected for the annual MSW report entitled, "Municipal Solid Waste in Texas: A Year in Review, 2012 Data Summary and Analysis" (AS-187-13), there are 195 active landfills and 198 active processing facilities. Of those, 87 landfills and 58 processing facilities diverted 789,669 tons of material for beneficial use.

#### *Permit By Rule*

The proposed rules also implement provisions in SB 819, 83rd Legislature, 2013, that increase the population limit for counties or municipalities that can be authorized by a PBR to dispose of demolition waste from abandoned or nuisance buildings. The bill increased the population limit from 10,000 people to 12,000 people. Increasing the population limit allows additional small West Texas communities an environmentally secure means of disposing of waste from abandoned buildings and other structures deemed to be a health or safety hazard. The bill allows counties or municipalities to dispose of demolition waste from a building, if the disposal occurs on land that the county or municipality owns or controls, and the landfill would qualify for an arid exemption under TCEQ rules.

No significant fiscal implications are anticipated for the agency, but some counties or municipalities may experience cost savings as a result of the implementation of the proposed rules. The commission does not expect the PBR to affect the amount of revenue it receives in Waste Management Account 0549. Current tipping fees and transportation costs for disposal of nuisance or abandoned buildings can be unaffordable for municipalities and counties in the area of the state affected by the proposed rules, therefore tipping fees collected from these local governments for disposal of this type of demolition waste has been minimal. Since the proposed rules do not require a tipping fee for disposal or an application fee for the new PBR, there is no anticipated impact to agency revenue. Cost savings are anticipated for counties or municipalities who dispose of nuisance or abandoned buildings under the proposed rules. These cost savings would vary considerably and agency staff is currently unable to provide an estimate of these savings.

While there are costs to counties or municipalities for implementing the PBR, such as excavation and access control costs at the disposal location, these are voluntary costs that are expected to be less than the costs of transporting the waste to an authorized disposal facility and paying the associated tipping fees at the facility.

When the original PBR for counties of 10,000 in population was implemented, six municipalities were authorized and one municipality is pending authorization. The increase in the population limit from 10,000 to 12,000 people will likely allow an additional six counties and six municipalities to apply for the PBR, if they so choose. The increase of 12 entities was estimated from the most recent census data.

#### Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law, more efficient use of state funds, and a more cost effective means of disposal for certain wastes.

The proposed rules are expected to result in cost savings for owners or operators of landfills and waste processing facilities. There are 75 landfills and 121 processing facilities that are privately owned or operated that would be impacted by the proposed rules. The amount of any cost savings would be highly variable for each owner or operator and agency staff is not currently able to quantify the savings. If owners or operators of landfills choose to pass the cost savings on to their customers, individuals may experience a decrease in fees they pay for waste disposal.

#### *Tipping Fee*

The proposed 25% reduction in the tipping fee that is paid to the agency is expected to result in lower costs for operators of disposal facilities. The tipping fee reduction has the potential to also lower costs for customers of the disposal facility (individuals, businesses, others disposing of waste) if the owners choose to pass the cost savings on to the consumers. However, it is unknown how many operators will choose to reduce the fees charged to waste disposal customers.

#### *Mulch Processing*

The proposed rules will allow facilities that process diverted material into compost or mulch to receive either an exemption from the tipping fee or a credit. The agency currently allows facilities to divert and process material (source-separated yard waste or non-source-separated material) into compost or mulch. The proposed rules would allow a standard practice already in place in many landfills to be codified into agency rules. Facilities that begin to divert material for compost or mulch will incur a cost, such as purchasing equipment, but these costs are voluntary. Providing incentives for landfills to divert material away from the landfill extends the life of the landfill.

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed rules will allow facilities that process diverted material into mulch or compost to receive either an exemption or credit on the tipping fee. These proposed rules are voluntary and do not impose new requirements on regulated entities. The proposed rules also reduce by 25% the tipping fee that landfill owners and operators collect and pay to the agency. This fee reduction is expected to result in lower costs for owners and operators of waste disposal facilities.

#### Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required, because the proposed rules do not adversely affect small or micro-businesses for the first five-year period the proposed rules are in effect and are required by state law.

#### Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not re-

quired, because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rules do not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule the specific intent of which is 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. The proposed rulemaking is intended to implement amendments to statutory provisions. The authority to issue a PBR for a county or municipality with a population of 10,000 people or less to dispose of demolition waste from properties controlled by the county or municipality with nuisance or abandoned buildings is increased to allow this authorization for populations of 12,000 or less. The fee due to the state from landfill operators for the amount of solid waste disposed at landfills is reduced by 25%. A provision is added to require the commission to issue biennial reports on how that fee money is spent. The existing exemption from these fees for composting source-separated yard waste is expanded to exempt composting or mulching source-separated material. The proposal does not meet the definition of "major environmental rule" because the rulemaking action is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Furthermore, the proposal does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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 4) adopts a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rules do not meet any of these applicability requirements: there are no corresponding standards set by federal law and the proposals are either allowed or required by state law; the proposed amendments does not exceed an express requirement of state law; the rules do not exceed an express 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; and the commission does not propose the rules solely under the general powers of the agency, but rather under the authority of THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; THSC, §361.024, which provides the commission with rulemaking authority; THSC, §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 THSC, §361.013 and §361.014, which require the commission to charge fees and report on how the fees are spent. Therefore, the commission does not propose

the adoption of the rules solely under the commission's general powers.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The specific intent of the proposed amendments are to reduce fees the state charges landfills and to require the commission to report how fees are spent. The amendments do not impose a burden on a recognized real property interest and therefore do not constitute a taking. The promulgation of the proposed rulemaking is neither a statutory nor a constitutional taking of private real property by the commission. Specifically, the proposed rulemaking does not affect a landowner's rights in a recognized private real property interest because this rulemaking neither: burdens (constitutionally) or restricts or limits the owner's right to the property that would otherwise exist in the absence of this rulemaking; nor would it reduce its value by 25% or more beyond that value which would exist in the absence of the proposed rules. Therefore, the proposed rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

#### Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program (CMP), and will, therefore, require that goals and policies of the Texas Coastal Management Program be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the §§330.671, 330.673, and 330.675 amendments are consistent with CMP goals and policies because the rulemaking is a fee rule, which is a procedural mechanism for paying for commission programs; will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies.

The commission determined that the amendment in §330.7 will not affect any coastal natural resource areas because the rules only affect counties outside the CMP area and is, therefore, consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on February 18, 2014, at 2:00 p.m. in Bldg. E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however,

commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Ms. Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

#### Submission of Comments

Written comments may be submitted to Mr. Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-050-330-WS. The comment period closes March 3, 2014. Copies of the proposed rule-making can be obtained from the commission's Web site at [http://www.tceq.texas.gov/nav/rules/propose\\_adopt.html](http://www.tceq.texas.gov/nav/rules/propose_adopt.html). For further information, please contact Ms. Charlyne Fritz, Waste Permits Division, (512) 239-2331.

### SUBCHAPTER A. GENERAL INFORMATION

#### 30 TAC §330.7

##### Statutory Authority

The amendment is proposed under the authority of: Texas Health and Safety Code (THSC), §361.011, Commission's Jurisdiction: Municipal Solid Waste, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste; THSC, §361.024, Rules and Standards, which provides the commission with rulemaking authority; THSC, §361.061, Permits: Solid Waste Facility, 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 THSC, §361.126, Disposal of Demolition Waste from Abandoned or Nuisance Building.

The proposed amendment implements THSC, §361.061 and §361.126.

##### §330.7. Permit Required.

(a) Except as provided in §§330.9, 330.11, 330.13, or 330.25 of this title (relating to Registration Required; Notification Required; Waste Management Activities Exempt from Permitting, Registration, or Notification; and Relationship with County Licensing System), no person may cause, suffer, allow, or permit any activity of storage, processing, removal, or disposal of any solid waste unless such activity is authorized by a permit or other authorization from the commission. In the event this requirement is violated, the executive director may seek recourse against not only the person that stored, processed, or disposed of the waste but also against the generator, transporter, owner or operator, or other person who caused, suffered, allowed, or permitted its waste to be stored, processed, or disposed. No person may commence physical construction of a new municipal solid waste (MSW) management facility, a vertical expansion, or a lateral expansion without first having submitted a permit application in accordance with §§330.57, 330.59, 330.61, 330.63, and 330.65 of this title (relating to Permit and Registration Applications for Municipal Solid Waste Facilities; Contents of Part I of the Application; Contents of Part II of the Application; Contents of Part III of the Application; and Contents [e~~ontents~~] of Part IV of the Application, respectively) and received a permit from the commission, except as provided otherwise in this section.

(b) A separate permit is required for the storage, transportation, or handling of used oil mixtures collected from oil/water separators. Any person that intends to conduct such activity shall comply with the regulatory requirements of Chapter 324 of this title (relating to Used Oil Standards).

(c) Permits by rule may be granted for persons that compact or transport waste in enclosed containers or enclosed transportation units to a Type IV facility.

(1) A permit by rule is granted for a generator operating a stationary compactor that is only used to compact waste to be disposed of at a Type IV landfill, if all of the following conditions are met.

(A) The generator submits the following information and any requested additional information on forms provided by the executive director:

(i) generator contact person, company name, mailing address, street address, city, state, ZIP code, and telephone number;

(ii) contract renewal date, if applicable;

(iii) rated compaction capability in pounds per cubic yard;

(iv) container size;

(v) description of waste stream to enter compactor;

(vi) receiving MSW Type IV disposal facility name, permit number, mailing address, street address, city, state, ZIP code, telephone number, and contact person; and

(vii) a certification from the generator that states the following: I, (name) \_\_\_\_\_, (title) \_\_\_\_\_ of (company name) \_\_\_\_\_, located at (street address) \_\_\_\_\_ in (city) \_\_\_\_\_, certify that the contents of the compactor located at the location stated herein are free of and shall be maintained free of putrescible, hazardous, infectious, and any other waste not allowed in an MSW Type IV landfill.

(B) The generator submits a \$75 fee along with the claim for the permit by rule.

(C) The generator complies with the operational requirements of §330.215 of this title (relating to Requirements for Stationary Compactors).

(D) A stationary compactor permit by rule expires after one year. The generator must submit an annual renewal fee in the amount of \$75. Failure to timely pay the annual fee eliminates the option of disposal of these wastes at a Type IV landfill until the generator claims a new or renewed permit by rule.

(2) A permit by rule is granted for transporters using enclosed containers or enclosed vehicles to collect and transport brush, construction or demolition wastes, and rubbish along special collection routes to MSW Type IV landfill facilities if all of the following conditions are met.

(A) The owner or operator seeking a special collection route permit by rule submits to the executive director the following information and any requested additional information on forms provided by the executive director:

(i) name of owner and operator, mailing address, street address, city, state, ZIP code, name and title of a contact person, and telephone number;

(ii) receiving MSW Type IV disposal facility name, permit number, mailing address, street address, city, state, ZIP code, telephone number, and contact person;

(iii) information on each transportation unit, including, at a minimum, license number, vehicle identification number, year model, make, capacity in cubic yards, and rated compaction capability in pounds per cubic yard;

(iv) route information, which shall include as a minimum the collection frequency, the day of the week the route is to be collected, and the day and time span within which the route is to arrive at the MSW Type IV landfill;

(v) a description of the wastes to be transported;

(vi) an alternative contingency disposal plan to include alternate trucks to be used or alternative disposal facilities; and

(vii) a signed and notarized certification from the owner or operator that states the following: I, (name) \_\_\_\_\_, (title) \_\_\_\_\_, of \_\_\_\_\_ operating in \_\_\_\_\_ County, certify that the contents of the vehicles described above will be free of putrescible, household, hazardous, infectious, or any other waste not allowed in an MSW Type IV landfill.

(B) The transporter submits a \$100 per vehicle fee along with the claim for a permit by rule.

(C) The transporter documents each load delivered with a trip ticket form provided by the executive director, and provides the trip ticket to the landfill operator prior to discharging the load.

(D) A special collection route permit by rule expires after one year. The owner or operator must submit an annual renewal fee in the amount of \$100 per vehicle. Failure to timely pay the annual fee eliminates the option of disposal of these wastes at a Type IV landfill until the owner or operator claims a new or renewed permit by rule.

(E) This paragraph does not apply if the waste load is from a single collection point that is a stationary compactor authorized in accordance with paragraph (1) of this subsection.

(3) Revision requirements for stationary compactor permits or special collection route permits by rule identified in paragraphs (1) and (2) of this subsection are as follows.

(A) An update must be submitted if any information within the original permit by rule submittal changes.

(B) A submittal to update an existing permit by rule must include all of the same documentation required for an original permit by rule submittal.

(d) A major permit amendment, as defined by §305.62 of this title (relating to Amendments), is required to reopen a Type I, Type IAE, Type IV, or Type IVAE MSW facility permitted by the commission or any of its predecessor or successor agencies that has either stopped accepting waste, or only accepted waste in accordance with an emergency authorization, for a period of five years or longer. The MSW facilities covered by this subsection may not be reopened to accept waste again unless the permittee demonstrates compliance with all applicable requirements of the Resource Conservation and Recovery Act, Subtitle D and the implementing Texas state regulations. If an MSW facility was subject to a contract of sale on January 1, 2001, the scope of any public hearing held on the permit amendment required by this subsection is limited to land use compatibility, as provided by §330.57(a) of this title. This subsection does not apply to any MSW facility that has received a permit but never received waste, or that received an approved Subtitle D permit modification before September 1, 2001.

(e) A permit by rule is granted for an animal crematory that meets the following criteria. For facilities that do not meet all the requirements of this subsection, the owner or operator shall submit a permit application under §§330.57, 330.59, 330.61, 330.63, and 330.65 of this title and obtain a permit. To qualify for a permit by rule under this subsection, the following requirements must be met.

(1) General prohibitions. An animal crematory facility shall comply with §330.15(a) of this title (relating to General Prohibitions).

(2) Incineration limits. Incineration of carcasses shall be limited to the conditions specified in §106.494 of this title (relating to Pathological Waste Incinerators (Previously SE 90)). The facility shall not accept animal carcasses that weigh more than the capacity of the largest incinerator at the facility and shall not dismember any carcasses during processing.

(3) Ash control. Ash disposal must be at an authorized facility unless the ash is returned to the animal owner or sent to a pet cemetery. Ash shall be stored in an enclosed container that will prevent release of the ash to the environment. There shall be no more than 2,000 pounds of ash stored at an animal crematory at any given time.

(4) Air pollution control. Air emissions from the facility shall not cause or contribute to a condition of air pollution as defined in Texas Clean Air Act, §382.003. All animal crematories, prior to construction or modification, must have an air permit issued under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), or qualify for a permit by rule under §106.494 of this title.

(5) Fire protection. The facility shall prepare, maintain, and follow a fire protection plan. This fire protection plan shall describe fire protection resources (a local fire department, fire hydrants, fire extinguishers, water tanks, water well, etc.), and employee training and safety procedures. The fire protection plan shall comply with local fire codes.

(6) Storage limits. Carcasses must be incinerated within two hours of receipt, unless stored at or below a temperature of 29 degrees Fahrenheit. Storage of carcasses shall be in a manner that minimizes the release of odors. Storage of carcasses shall be limited to the lesser of 3,200 pounds or the amount that can be incinerated at the maximum loading rate for the incinerators at the facility in a two-day period.

(7) Unauthorized waste. Only carcasses or animal parts, with any associated packaging, shall be processed. Carcasses shall not be accepted in packaging that includes any chlorinated plastics. Carcasses or animal parts that are either hazardous waste or medical waste are prohibited.

(8) Cleaning. Storage and processing units must be properly cleaned on a routine basis to prevent odors and the breeding of flies.

(9) Nuisance prevention. The facility shall be designed and operated in a manner so as to prevent nuisance conditions, including, but not limited to, dust from ashes, disease vectors, odors, and liquids from spills, from being released from the property boundary of the authorized facility.

(10) Diseased animals. The facility shall be equipped with appropriate protective equipment and clothing for personnel handling diseased animals that may be received at the facility. Facility owners or operators must inform customers and local veterinarians of the need to identify diseased animals for the protection of personnel handling the animals.

(11) Buffer zone. An animal crematory, including unloading and storage areas, constructed after March 2, 2003, must be at least 50 feet from the property boundary of the facility.

(12) Operating hours. A crematory shall operate within the time frames allowed by §111.129 of this title (relating to Operating Requirements).

(13) Documentation. The operator of an animal crematory shall document the carcasses' weight, date and time when carcasses are received, and when carcasses are loaded into the incinerator. A separate entry in the records for loading into the incinerator is not required if a carcass is loaded within two hours of receipt. This information will be maintained in records on site.

(14) Breakdown. The facility is subject to §330.241 of this title (relating to Overloading and Breakdown).

(15) Records management. The owner or operator must retain records as follows:

(A) maintain a copy of all requirements of this subsection that apply to the facility;

(B) maintain records for the previous consecutive 12-month period containing sufficient information to demonstrate compliance with all requirements of this subsection;

(C) keep all required records at the facility; and

(D) make the records available upon request to personnel from the commission or from local governments with jurisdiction over the facility.

(16) Fees. An animal crematory facility authorized under this section is exempt from the fee requirements of Subchapter P of this chapter (relating to Fees and Reporting).

(17) Other requirements. No other requirements under this chapter are applicable to a facility that meets all of the requirements of this subsection.

(f) A permit by rule is granted for a dual chamber incinerator if the owner or operator complies with §106.491 of this title (relating to Dual-Chamber Incinerators).

(g) A permit by rule is granted for an air curtain incinerator if the owner or operator complies with §106.496 of this title (relating to Air Curtain Incinerators). An air curtain incinerator may not be located within 300 feet of an active or closed MSW landfill unit boundary.

(h) A standard air permit is granted for facilities that comply with Subchapter U of this chapter (relating to Standard Air Permits for Municipal Solid Waste Landfill Facilities and Transfer Stations).

(i) A permit by rule is granted for a period of up to five years to a county or municipality with a population of 12,000 [~~10,000~~] people or less to dispose of demolition waste from properties with nuisance or abandoned buildings.

(1) Requirements. The following conditions must be met.

(A) Form submittal. The county or municipality submits a form provided by the commission to the executive director for review and approval before construction begins.

(B) Notice to regional office. The county or municipality notifies the applicable commission regional office of the intent to dispose of waste under this authorization at least 48 hours prior to accepting the first load of waste.

(C) Facility location. The location where disposal will occur:

(i) is owned or controlled by the county or municipality, and

(ii) receives less than or equal to 25 inches average annual precipitation as determined from precipitation data for the nearest official precipitation recording station for at least the most recent 30-year reporting period or by another method approved by the executive director.

(D) Sources of waste. The properties on which nuisance and abandoned buildings are located have been acquired by the county or municipality by means of bankruptcy, tax delinquency, or condemnation, and the previous owners are not financially capable of paying the costs of the disposal of demolition waste at a permitted solid waste disposal facility, including transportation of the waste to the facility.

(E) Waste acceptance.

(i) Prior to demolition, structures are surveyed and abated, if required, for asbestos-containing materials in accordance with 25 TAC Chapter 295, Subchapter C (relating to Texas Asbestos Health Protection).

(ii) The facility may accept non-regulated asbestos-containing materials (non-RACM) for disposal. The wastes are placed on the active working face and covered at the end of the operating day with at least six inches of soil. Under no circumstances may any of the material containing non-RACM be placed on a surface that is subject to vehicular traffic or disposed of by any other means by which the material could be crumbled into a friable state.

(iii) The facility may accept regulated asbestos-containing materials (RACM) if the following conditions are met.

(I) The county or municipality notifies the executive director on a form provided by the commission in accordance with subparagraph (A) of this paragraph.

(II) All waste trenches are identified as receiving RACM, and deed records required under subparagraph (Q) of this paragraph include an indication that the waste trench(es) received RACM.

(III) RACM is transported and received at the facility in tightly closed and unruptured containers or bags or wrapped with at least six-mil polyethylene.

(IV) Bags or containers holding RACM are carefully unloaded and placed in the final disposal location. RACM is then covered immediately with at least six inches of soil. Care is taken during unloading and placement of RACM and during application of the cover so that the bags or containers are not ruptured.

(iv) Waste is limited to the abandoned or nuisance buildings and materials from the property on which the buildings are located. All waste disposed under this authorization must meet the limitations of §330.5(a)(2) of this title (relating to Classification of Municipal Solid Waste Facilities) and may not include waste prohibited under §330.15(e) of this title.

(F) Access control. Access to the disposal facility is controlled by means of fences, other artificial barriers, natural barriers, or a combination of these methods, and includes a locking gate.

(G) Buffers and easements. The county or municipality maintains a minimum distance of 50 feet as a buffer between the permit boundary and waste storage, processing and disposal areas. No disposal occurs within a utility or pipeline easement or within 25 feet of the center of a utility or pipeline easement.

(H) Below-grade placement. Waste is placed only below grade. The top of final cover is placed at pre-existing grade or up to three feet above pre-existing grade to ensure that natural drainage patterns are not altered and ponding of water over waste is prevented.

(I) Weekly cover. Waste is covered at least weekly with six inches of earthen material not previously mixed with waste, or by tarps. Use of tarps as cover is limited to a seven-day period after which the county or municipality must replace the tarp with either waste or a six-inch layer of earthen material not previously mixed with waste. Tarps may not be used in place of soil cover requirements relating to non-RACM and RACM in subparagraph (E)(ii) and (iii) of this paragraph. Any trench that has received waste but will be inactive for more than 180 days receives intermediate cover in accordance with subparagraph (J) of this paragraph, or final cover in accordance with subparagraph (P) of this paragraph.

(J) Intermediate cover. Waste is covered, including any soil weekly cover, with twelve inches of well compacted earthen material not previously mixed with waste.

(K) Maximum volume. The design waste disposal volume is less than 2.5 million cubic meters in accordance with §106.534(3) of this title (relating to Municipal Solid Waste Landfills and Transfer Stations).

(L) Facility signs. At all entrances through which waste is received, the facility conspicuously displays a sign with letters at least three inches in height providing a statement that the facility is "NOT FOR PUBLIC USE," an emergency 24-hour contact number that reaches an individual with the authority to obligate the facility at all times that the facility is not in operation, and the local emergency fire department number.

(M) Stormwater and contaminated water. The county or municipality constructs berms to divert the 25-year/24-hour storm event from entering excavations containing waste. Water that has contacted waste is managed as contaminated water and disposed at an authorized treatment facility.

(N) Reporting. The county or municipality, while not required to provide quarterly reporting, provides annual reporting in accordance with the annual reporting provisions of §330.675(a) of this title (relating to Reports).

(O) Reauthorization. Before reaching the permit by rule term limit of five years, the county or municipality may request reauthorization under the permit by rule by submitting a form that is current at the time of reauthorization, provided by the commission in accordance with subparagraph (A) of this paragraph, to the executive director at least 14 days before the end of the permit term.

(P) Final cover. The following conditions are met.

(i) Within 60 days after a trench reaches its capacity or waste deposition activities are complete in a trench, the county or municipality installs final cover over waste in the trench. Final cover shall be composed of no less than two feet of soil. The first 18 inches or more of cover shall be of compacted clayey soil, classification sand clay (SC) or low plasticity clay (CL) as defined in the "Unified Soils Classification System" developed by the United States Army Corps of Engineers, and placed and compacted in layers of no more than six inches to minimize the potential for water infiltration. A high plasticity clayey (CH) soil may be used; however, this soil may experience excessive cracking and shall therefore be covered by a minimum of 12 inches of topsoil to retain moisture. Other types of soil may be used with prior written approval from the executive director. The final six inches of cover shall be of suitable topsoil that is capable of sustaining native plant growth and shall be seeded or sodded as soon as practi-

cable following the application of the final cover in order to minimize erosion.

(ii) The trench final cover procedures listed in clause (i) of this subparagraph are completed before facility closure, as described in subparagraph (Q) of this paragraph. If these procedures cannot be performed before the permit by rule term limit is reached, the county or municipality submits a current application form for reauthorization of the permit by rule to the executive director at least 14 days before the end of the permit term.

(Q) Facility closure. The county or municipality notifies the executive director and the applicable regional office at least 60 days before the anticipated closure date of the facility. Within ten days after closure, submit to the executive director by registered mail a certified copy of an "affidavit to the public" in accordance with the requirements of §330.19 of this title (relating to Deed Recordation). In addition, record a certified notation of the deed to the facility property, or on some other instrument that is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that the land has been used as a landfill facility and use of the land is restricted. Submit a certified deed to the executive director.

(2) Other provisions. The following provisions also apply to this authorization.

(A) Processing. This permit by rule also authorizes the processing of waste destined for the disposal unit. Authorized processing is limited to volume reduction, such as chipping or grinding, but not burning. Processing must occur within the permit boundary and may not occur within a buffer zone or right-of-way. Tires, RACM and non-RACM may not be processed. If required, the county or municipality must obtain authorization for air emissions resulting from this processing.

(B) Fees. Waste that is disposed under this authorization is not subject to the fee requirements of Subchapter P of this chapter.

(C) Other requirements. No other requirements under this chapter are applicable to a facility that meets all the requirements of this subsection.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 17, 2014.

TRD-201400169

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: March 2, 2014

For further information, please call: (512) 239-2141



## SUBCHAPTER P. FEES AND REPORTING

### 30 TAC §§330.671, 330.673, 330.675

#### Statutory Authority

The amendments are proposed under the authority of: Texas Health and Safety Code (THSC), §361.011, Commission's Jurisdiction: Municipal Solid Waste, which establishes the commission's jurisdiction over all aspects of the management of

municipal solid waste; THSC, §361.024, Rules and Standards, which provides the commission with rulemaking authority; THSC, §361.061, Permits; Solid Waste Facility, 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; THSC, §361.013, Solid Waste Disposal and Transportation Fees; and THSC 361.014, Use of Solid Waste Fee Revenue.

The proposed amendments implement THSC, §361.013 and §361.014.

§330.671. *Purpose and Applicability.*

(a) Purpose.

(1) Fees. The commission is mandated by Texas Health and Safety Code, §361.013, to collect a fee for solid waste disposed of within the state, and from transporters of solid waste who are required to register with the state. Persons desiring to transport or deliver waste in enclosed containers or enclosed vehicles to a Type IV municipal solid waste management facility are subject to special route permit application and maintenance fees set forth and described in §330.103 of this title (relating to Collection and Transportation Requirements). The fee amount may be raised or lowered in accordance with spending levels authorized by the legislature.

(2) Industrial solid waste and hazardous waste fees. The assessment of fees for the generation, treatment, storage, or disposal of industrial solid waste or hazardous waste is governed by regulations contained in Chapter 335, Subchapter J of this title (relating to Hazardous Waste Generation, Facility and Disposal Fee [Fees] System).

(3) Reports. The commission requires reports in order to track the amount of waste being stored, treated, processed, or disposed of in the state, to track the amount of processing and disposal capacity and reserve (future) disposal capacity, and to enable equitable assessment and collection of fees.

(b) Applicability.

(1) Fees. Each operator of a municipal solid waste disposal facility or process for disposal is required to pay a fee to the agency based upon the amount of waste received for disposal. For the purpose of this subchapter, "waste received for disposal" means the total amount of the waste (measured in tons or cubic yards, or determined by the population equivalent method specified in §330.675(a)(3) of this title (relating to Reports) received by a disposal facility at the gate, excluding only those wastes that are recycled or exempted from payment of fees under this subchapter or by law. For the purpose of these sections, landfills, waste incinerators, and sites used for land treatment or disposal of wastes, sites used for land application of sludge or similar waste for beneficial use, composting facilities, and other similar facilities or activities are determined to be disposal facilities or processes. Recycling operations or facilities that process waste for recycling are not considered disposal facilities. Source-separated material processed [Source separated yard waste composted] at a composting or mulch processing facility, including a composting or mulch processing facility located at a permitted landfill, is exempt from the fee requirements set forth and described in these sections. [For the purpose of these sections, source separated yard waste is defined as leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscape maintenance and land-clearing operations that has been separated and has not been commingled with any other waste material at the point of generation.] The agency will credit any fee payment due under this subchapter for any material received and processed [converted] to compost or mulch product at the facility [for composting through a composting process]. Any compost or mulch product that is produced at a

[for] composting or mulch processing facility that is [not] used in the operation of the facility or is disposed of [as compost and is deposited] in a landfill or used as landfill daily cover is not exempt from the fee.

(2) Industrial solid waste and hazardous waste fees. A fee for disposal of an industrial solid waste or hazardous waste in a municipal solid waste disposal facility shall be assessed at the rates prescribed under the authority of Chapter 335, Subchapter J of this title. If no fee under Chapter 335, Subchapter J of this title, is applicable to the disposal of an industrial solid waste or hazardous waste, then such waste shall be assessed a fee under this chapter for the disposal of solid waste in a municipal solid waste facility.

(3) Reports. All registered or permitted facility operators are required to submit reports to the executive director covering the types and amounts of waste processed or disposed of at the facility or process location; other pertinent information necessary to track the amount of waste generated and disposed of, recovered, or recycled; and the amount of processing or disposal capacity of facilities. The information requested on forms provided by the executive director shall not be considered confidential or classified information unless specifically authorized by law, and refusal to submit the form complete with accurate information by the applicable deadline shall be considered as a violation of this section and subject to appropriate enforcement action and penalty.

(4) Interest penalty. Owners or operators of a facility failing to make payment of the fees imposed under this subchapter when due shall be assessed penalties and interest in accordance with Chapter 12 of this title (relating to Payment of Fees).

§330.673. *Fees.*

(a) Landfilling. Each operator of a facility in Texas that disposes of municipal solid waste (MSW) by means of landfilling, including landfilling of incinerator ash, is required to pay a fee to the agency for all waste received for disposal. The fee rate for waste disposed of by landfilling is dependent upon the reporting units used.

(1) Fee rates. For purposes of this subsection, uncompacted waste means any waste that is not a liquid or a sludge, has not been mechanically compacted by a collection vehicle, has not been driven over by heavy equipment prior to collection, or has not been compacted subsequent or prior to collection by any type of mechanical device other than small, in-house, compactor devices owned and/or operated by the generator of the waste. Compacted waste is a liquid, sludge, or similar waste or any waste that has been reduced in volume by a collection vehicle or by any other means including, but not limited to, dewatering, composting, incineration, and similar processes.

(A) Tons. For waste reported in tons, the fee rate is \$0.94 ~~[\$1.25]~~ per ton received for disposal.

(B) Cubic yards (compacted). For waste reported in compacted cubic yards, the fee rate is \$0.30 ~~[\$0.40]~~ per cubic yard received for disposal.

(C) Cubic yards (uncompacted). For waste reported in uncompacted cubic yards, the fee rate is \$0.19 ~~[\$0.25]~~ per cubic yard received for disposal.

(2) Measurement options. The volume or weight reported on the quarterly solid waste summary report must be consistent with the volume or weight of the waste received for disposal, as defined in §330.671(b)(1) of this title (relating to Purpose and Applicability). The volume or weight of the waste received for disposal shall be determined prior to disposal or processing of the waste.

(A) The recommended method for measuring and reporting waste received at the gate is in short tons. The facility operator

must accurately measure and report the number of cubic yards or tons of waste received at the gate.

(i) The fee for waste reported in short tons will be calculated by the executive director at an amount equal to \$0.94 [~~\$1.25~~] per ton.

(ii) The fee for compacted waste reported in cubic yards will be calculated by the executive director at an amount equal to \$0.30 [~~\$0.40~~] per cubic yard.

(iii) The fee for uncompacted waste reported in cubic yards will be calculated by the executive director at an amount equal to \$0.19 [~~\$0.25~~] per cubic yard.

(B) If a landfill operator chooses to report the amount of waste received utilizing the population equivalent method authorized in §330.675(a)(3) of this title (relating to Reports), the fee for such waste received shall be calculated by the executive director at an amount equal to \$0.94 [~~\$1.25~~] per ton.

(3) Fee calculation. The fee shall be calculated by the executive director using information obtained from the quarterly solid waste summary report. The total cubic yards or tonnage reported to the executive director in the quarterly solid waste summary report shall be derived from gate tickets (weight or volume) or invoices, except in the case of operators who are authorized to report utilizing the population equivalent method in §330.675(a)(3) of this title, and records of recycled materials or any other information deemed relevant by the executive director. A billing statement will be generated quarterly by the executive director and forwarded to the applicable permittee/registrant or a designated representative.

(4) Fee due date. All solid waste fees shall be due within 30 days of the date the payment is requested.

(5) Method of payment. The required fee shall be submitted in the form of a check or money order made payable to the Texas Commission on Environmental Quality and delivered or mailed to the return address designated by the executive director in the billing statement distributed quarterly.

(6) Penalties. Failure of the landfill operator to submit the required fee payment by the due date shall be sufficient cause for the commission to revoke the landfill permit and authorization to process or dispose of waste. The commission may assess interest penalties for late payment of fees and may also assess penalties (fines) in accordance with Texas Water Code, §7.051 (relating to Administrative Penalty), or take any other action authorized by law to secure compliance.

(7) Exemptions.

(A) A fee will not be charged on solid waste resulting from a public entity's effort to protect the public health and safety of the community from the effects of a natural or man-made disaster or from structures that have been contributing to drug trafficking or other crimes if the disposal facility at which that solid waste is offered for disposal has donated to a municipality, county, or other political subdivision the cost of disposing of that waste.

(B) A fee only for the amount determined necessary to reimburse MSW regulatory activities will be charged federal facilities. Prior to the fourth MSW billing quarter following the close of each regular session of the Texas State Legislature, the Texas Commission on Environmental Quality's chief financial officer will determine the percentage of the MSW disposal fee that represents reimbursement for regulatory implementation of the state MSW program and the percentage that represents a state tax. The percentage determination shall be reported to the MSW Permits Section for use in determining fees owed by federal facilities. The MSW Permits Section shall grant federal fa-

cilities a credit on their MSW fees equal to the percentage of the fee determined to be a state tax. The credit shall be applied to each billing quarter beginning with the first billing quarter of the state fiscal year.

(b) Incinerators and processes for disposal. Each operator of a facility that disposes of or processes MSW for disposal by means other than landfilling is required to pay a fee to the agency for all waste received for processing or disposal. Facilities and/or processes included in this category include, but are not limited to, incineration; composting; application of sludge, septic tank waste, or shredded waste to the land; and similar facilities or processes. Not included as a process for disposal is land application of waste that has already been properly composted in one of the facilities named.

(1) Fee rates. For purposes of this subsection, uncompacted waste means any waste that is not a liquid or a sludge, has not been mechanically compacted by a collection vehicle, has not been driven over by heavy equipment prior to collection, or has not been compacted subsequent or prior to collection by any type of mechanical device other than small, in-house, compactor devices owned and/or operated by the generator of the waste. Compacted waste is a liquid, sludge, or similar waste or any waste that has been reduced in volume by a collection vehicle or by any other means including, but not limited to, dewatering, composting, incineration, and similar processes.

(A) Tons. For waste reported in tons, the fee rate is \$0.47 [~~\$0.62~~ and ~~one-half cent~~] per ton received.

(B) Cubic yards (compacted). For waste reported in compacted cubic yards, the fee rate is \$0.15 [~~\$0.20~~] per cubic yard received.

(C) Cubic yards (uncompacted). For waste reported in uncompacted cubic yards, the fee rate is \$0.09 [~~\$0.12~~] and one-half cent per cubic yard received.

(2) Measurement options. The volume or weight reported on the quarterly solid waste summary report must be consistent with the volume or weight of the waste received for disposal, as defined in §330.671(b)(1) of this title. The volume or weight of the waste received for disposal shall be determined prior to disposal or processing of the waste.

(A) The recommended method for measuring and reporting waste received at the gate is in short tons. The operator must accurately measure and report the number of cubic yards or tons of waste received.

(i) The fee for waste reported in short tons will be calculated by the executive director at an amount equal to \$0.47 [~~\$0.62~~ and ~~one-half cent~~] per ton.

(ii) The fee for compacted waste reported in cubic yards will be calculated by the executive director at an amount equal to \$0.15 [~~\$0.20~~] per cubic yard.

(iii) The fee for uncompacted waste reported in cubic yards will be calculated by the executive director at an amount equal to \$0.09 [~~\$0.12~~] and one-half cent per cubic yard.

(B) If a facility operator chooses to report the amount of waste received utilizing the population equivalent method authorized in §330.675(a)(3) of this title, the fee shall be calculated by the executive director at an amount equal to \$0.47 [~~\$0.62~~ and ~~one-half cent~~] per ton.

(3) Fee calculation. The fee shall be calculated by the executive director using information obtained from the quarterly solid waste summary report. The total cubic yards or tonnage reported to the executive director in the quarterly solid waste summary report shall be derived from gate tickets (weight or volume) or invoices, except in

the case of operators who are authorized to report utilizing the population equivalent method in §330.675(a)(3) of this title, and records of recycled materials or any other information deemed relevant by the executive director. A billing statement will be generated quarterly by the executive director and forwarded to the applicable permittee/registrant or a designated representative.

(4) Fee due date. All solid waste fees shall be due within 30 days of the date the payment is requested.

(5) Method of payment. The required fee shall be submitted in the form of a check or money order made payable to the Texas Commission on Environmental Quality and delivered or mailed to the return address designated by the executive director in the billing statement distributed quarterly.

(6) Penalties. Failure of the facility or process operator to submit the required fee payment by the due date shall be sufficient cause for the commission to revoke the permit or registration and authorization to process or dispose of waste. The commission may assess interest penalties for late payment of fees and may also assess penalties (fines) in accordance with Texas Water Code, §7.051, or take any other action authorized by law to secure compliance.

(7) Exemptions. A fee will not be charged on solid waste resulting from a public entity's effort to protect the public health and safety of the community from the effects of a natural or man-made disaster or from structures that have been contributing to drug trafficking or other crimes if the disposal facility at which that solid waste is offered for disposal has donated to a municipality, county, or other political subdivision the cost of disposing of that waste.

(c) Facilities and processes not for disposal. Facilities or processes not included in the scope of subsections (a) and (b) of this section shall be considered as "facilities and processes not for disposal." Facilities and processes not for disposal are those facilities that are permitted or registered independently from landfill, incinerator, or disposal processing operations and include, but are not limited to, such facilities or processes as transfer stations, shredders, balers, methane extractors, etc. Facilities and processes not for disposal are not required to pay a fee to the agency, but are required to submit reports.

#### §330.675. Reports.

(a) Disposal facilities and processes.

(1) Municipal Solid Waste Fee Report frequency, report form, and report information.

(A) Report frequency. Quarterly, each disposal facility or process operator shall report to the executive director the information requested on the report form for the appropriate reporting period including the amount of source-separated material processed [~~source separated yard waste converted~~] to compost or mulch product [~~product for composting~~]. Annually, the operator shall submit a summary of the information to show the yearly totals and year-end status of the facility or process, as requested on the report form, for the appropriate reporting period. An operator shall file a separate report for each facility that has a unique permit, permit application number, or registration number.

(B) Report form. The report shall be on a form furnished by the executive director or reproduced from a form furnished by the executive director or by an electronic form or format furnished by the executive director. Forms reproduced by the facility operator are not recommended because each report form for each reporting period will have two unique numbers on each form. One number will specifically identify the facility for which the report is made; the other number will specifically identify the individual form. To use the wrong form, or the form intended for a different reporting period, will automatically make the data incorrect for that facility report. The operator

will receive one form from the executive director for each facility or process prior to the due date. The operator must assure that the data entered on the form are applicable for the particular facility and period for which the data are reported.

(C) Report information. In addition to a statement of the amount of waste received for processing or disposal, the report shall contain other information requested on the form, including the facility operator's name, address, and phone number; the permit number, permit application number, or registration number; the facility type, size, and capacity; and other information the executive director may request.

(2) Reporting units. The amount of waste received for processing or disposal shall be reported in short tons (2,000 pounds) or in cubic yards as received (compacted or uncompacted) at the gate. If accounting of the waste is recorded in cubic yards, then separate accounting must be made for waste that comes to the facility in open vehicles or without compaction, and waste that comes to the facility in compactor vehicles. If scales are not utilized and accounting of the waste received is in cubic yards, gallons, or drums then those volumetric units may be converted to tons for reporting purposes, using the conversion factors set forth in subparagraphs (A) and (B) of this paragraph.

(A) General weight/volume conversion factors for various types of waste shall be as follows:

(i) one ton = 2,000 pounds;

(ii) one gallon = 7.5 pounds (grease trap waste);

(iii) one gallon = 8.5 pounds (wastewater treatment plant sludge or septage);

(iv) one gallon = 9.0 pounds (grit trap waste); and

(v) one drum = 55 gallons.

(B) Conversion factors to be used for waste transport vehicles relative to waste volume and weight in vehicles shall be as follows:

(i) one cubic yard = 400 pounds (no compaction);

(ii) one cubic yard = 666.66 pounds (medium compaction); and

(iii) one cubic yard = 800 pounds (heavy compaction).

(3) Use of population equivalent. In determining the amount of waste deposited in a landfill serving less than 5,000 people or the amount of waste processed for disposal at a processing facility serving less than 5,000 people, the owner/operator may use the number of tons calculated or derived from the population served by the facility in lieu of maintaining records of the waste deposited at the facility. The amount of waste shall be calculated on the basis of one ton per person per year. The report shall document the population served by the facility and reflect any changes since the previous report.

(4) Reporting units for beneficial land use application sites. Wastewater treatment plant sludge and septage received for disposal at registered beneficial use land application sites in vacuum or closed tank trucks may be reported in dry weight equivalent units, provided the site operator either produces satisfactory documentation indicating the percent solids present in the received waste materials or uses the dry weight/volume conversion factors set forth in subparagraphs (A) and (B) of this paragraph:

(A) one gallon = 0.5 pounds (sludge - dry weight equivalent); and

(B) one gallon = 0.3 pounds (septage - dry weight equivalent).

(5) Report due date. The required quarterly solid waste summary report shall be submitted to the executive director not later than 20 days following the end of the fiscal quarter for which the report is applicable. The fiscal year begins on September 1, and concludes on August 31.

(6) Method of submission. The required report shall be delivered or mailed to the agency to the return address designated by the executive director in the billing statement distributed quarterly.

(7) Penalties. Failure of the facility or process operator to submit the required report by the due date shall be sufficient cause for the commission to revoke the permit or registration and authorization to process or dispose of waste. The commission may assess interest penalties for late payment of fees and may also assess penalties (fines) in accordance with Texas Water Code, §7.051 (relating to Administrative Penalty) or take any other action authorized by law to secure compliance.

(b) Facilities and processes not for disposal. Facilities and processes not for disposal (as defined in §330.673(c) of this title (relating to Fees)) are subject to reporting requirements, but are not required to pay a fee.

(1) Municipal Solid Waste Annual Summary Report frequency, report form, and report information.

(A) Report frequency. Annually, each facility or process operator shall report to the executive director the information requested on the report form for the appropriate reporting period. An operator shall file a separate report for each facility that has a unique permit, permit application number, or registration number.

(B) Report form. The form of the report shall be in accordance with subsection (a)(1)(B) of this section.

(C) Report information. The information in the report shall be in accordance with subsection (a)(1)(C) of this section.

(2) Reporting units. The units used in reporting shall be in accordance with subsection (a)(2) of this section.

(3) Use of population equivalent. The use of the population equivalent method of reporting waste received or processed shall be in accordance with subsection (a)(3) of this section.

(4) Report due date. The required annual report shall be submitted to the executive director not later than 45 days following the calendar year for which the report is applicable.

(5) Method of submission. The required report shall be delivered or mailed to the agency to the return address designated by the executive director in the billing statement distributed quarterly.

(6) Penalties. Failure of the facility or process operator to submit the required report by the due date shall be sufficient cause for the commission to revoke the permit or registration and authorization to process or dispose of waste. The commission may assess interest penalties for late payment of fees and may also assess penalties (fines) in accordance with Texas Water Code, §7.051 or take any other action authorized by law to secure compliance.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 17, 2014.

TRD-201400170

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: March 2, 2014

For further information, please call: (512) 239-2141

◆ ◆ ◆  
**CHAPTER 339. GROUNDWATER  
PROTECTION RECOMMENDATION  
LETTERS AND FEES**

**30 TAC §§339.1 - 339.3**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to repeal §§339.1 - 339.3.

**Background and Summary of the Factual Basis for the Proposed Rules**

The TCEQ Sunset Legislation, House Bill (HB) 2694, Article 2, passed by the 82nd Legislature, 2011, and signed by the governor, transferred from the TCEQ to the Railroad Commission of Texas (RRC) duties relating to the protection of groundwater resources from oil and gas associated activities. Specifically, HB 2694, Article 2, amended the Texas Natural Resources Code to revise §91.011, add §§91.0115, 91.020, and 91.1015, and amended the Texas Water Code, §27.033. On September 1, 2011, the law transferred from the TCEQ to the RRC those duties pertaining to the responsibility of preparing groundwater protection advisory/recommendation letters. Since the transfer, the RRC has been responsible for providing surface casing and/or groundwater protection recommendations for oil and gas activities under the jurisdiction of the RRC.

The TCEQ's Surface Casing Program and staff transferred to the RRC on September 1, 2011. The RRC's Surface Casing Program was renamed the Groundwater Advisory Unit, and is now located in the William B. Travis Building, 1701 North Congress, Austin.

The RRC has adopted amendments to their regulations to reflect the changes in law made under HB 2694, Article 2. The rules in Chapter 339 authorized the executive director to provide groundwater protection letters to the RRC for use in various activities and applications before the RRC and to collect a fee for the expedited processing of a request for a groundwater protection recommendation. Because the executive director no longer provides the groundwater protection letters to the RRC, the commission's rules in Chapter 339 are no longer necessary. The RRC adopted amendments to their regulations on May 24, 2013. These regulations are effective January 1, 2014. Therefore, the commission proposes the repeal of §§339.1 - 339.3 in their entirety.

**Section by Section Discussion**

**§339.1, Purpose**

The commission proposes the repeal of §339.1. This section authorizes the executive director to provide groundwater protection letters to the RRC. With the transfer of this function from the

commission to the RRC in HB 2694, this section is no longer required.

#### *§339.2, Applicability*

The commission proposes the repeal of §339.2. This section explains the applicability for the types of applications for which a recommendation to the RRC is provided on depth or depths to usable-quality groundwater. With the transfer of this function from the commission to the RRC in HB 2694, this section is no longer required.

#### *§339.3, Groundwater Protection Letter Requests, Expedited Processing, and Fee*

The commission proposes the repeal of §339.3. This section authorizes the executive director to establish procedures and to collect fees for the processing of applications for groundwater protection recommendations. With the transfer of this function from the commission to the RRC in HB 2694, this section is no longer required.

#### Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rules would implement portions of the TCEQ Sunset Legislation, HB 2694, Article 2, passed by the 82nd Legislature, 2011. Specifically, the proposed rules would complete the transfer, from the TCEQ to the RRC, of duties relating to the preparation of groundwater protection advisory/recommendation letters for oil and gas drilling activities and geologic storage of anthropogenic carbon dioxide. This program was transferred to the RRC on September 1, 2011, by HB 2694. Since that time, the RRC has been responsible for providing surface casing and/or groundwater protection advisory recommendation letters to oil and gas drilling companies which are already under the jurisdiction of the RRC.

The proposed rulemaking is similar to rulemaking in 2011, Rule Project Number 2011-037-007-WS, which repealed Chapter 339 along with making other revisions. The 2011 rule proposal, without the Chapter 339 repeal, was approved by the commission on December 5, 2012. The TCEQ repeal could not become effective until the RRC adopted similar rules. The RRC was working concurrently with TCEQ to adopt similar rules; however, due to the number of comments the RRC received, their rulemaking process was extended. Because it was not known how long the RRC would extend their rulemaking, TCEQ withdrew its Chapter 339 repeal until RRC rulemaking was completed. The RRC adopted the necessary rules on May 24, 2013, which became effective on January 1, 2014. The TCEQ can now proceed with repealing Chapter 339.

On September 1, 2011, in order to implement the transfer of the groundwater protection recommendation program, the TCEQ transferred 9.0 full-time employees and \$931,256 in annual costs and fee revenue out of the Water Resource Management Account No. 153 to the RRC, to allow the RRC to implement the groundwater protection program. The RRC would fund the program with appropriated fee revenue they collect for issuing the groundwater protection recommendations. The proposed rules would not have any fiscal impacts for other state agencies or units of local government. The proposed rulemaking would

repeal Chapter 339 in its entirety since the duties related to this chapter are now the responsibility of the RRC.

#### Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law.

The proposed rules are not expected to have fiscal implications for businesses or individuals. The proposed rules repeal provisions that are no longer part of the agency's jurisdiction. The RRC became responsible for enforcing regulations pertaining to groundwater protection for oil and gas activities and geologic storage of anthropogenic carbon dioxide on September 1, 2011.

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed rules repeal provisions that are no longer part of the agency's jurisdiction. The RRC became responsible for enforcing regulations pertaining to groundwater protection for oil and gas activities and geologic storage of anthropogenic carbon dioxide on September 1, 2011.

#### Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are necessary to implement state law and do not adversely affect small or micro-businesses for the first five-year period the proposed rules are in effect.

#### Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule the specific intent of which is 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. The proposal does not meet the definition of "major environmental rule" because the rulemaking action is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Instead, the rulemaking action is intended to repeal Chapter 339 which is no longer necessary because the functions and authorization provided in the rules were transferred by statute from the commission to the RRC.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Takings Impact Assessment

The commission evaluated this rulemaking action and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The proposed action implements legislative requirements in HB 2694, 82nd Legislature, 2011, which transferred duties from the commission to the RRC relating to the preparation of groundwater protection letters for certain activities and applications before the RRC. The repeal of these rules would be neither a statutory nor a constitutional taking of private real property. The proposed repeals do not affect a landowner's rights in private real property because this rule-making action does not burden (constitutionally), nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations.

#### Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on February 18, 2014, at 2:00 p.m. in Bldg. E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Ms. Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

#### Submittal of Comments

Written comments may be submitted to Mr. Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-050-330-WS. The comment period closes March 3, 2014. Copies of the proposed rule-making can be obtained from the commission's website at [http://www.tceq.texas.gov/nav/rules/propose\\_adapt.html](http://www.tceq.texas.gov/nav/rules/propose_adapt.html). For further information, please contact Ms. Charlyne Fritz, Waste Permits Division, (512) 239-2331.

#### Statutory Authority

The repeals are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC, and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to

carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed repeals implement House Bill 2694, 82nd Legislature, 2011.

§339.1. *Purpose.*

§339.2. *Applicability.*

§339.3. *Groundwater Protection Letter Requests, Expedited Processing, and Fee.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 17, 2014.

TRD-201400171

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: March 2, 2014

For further information, please call: (512) 239-2141

## TITLE 43. TRANSPORTATION

### PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

#### CHAPTER 218 MOTOR CARRIERS SUBCHAPTER F. ENFORCEMENT

##### 43 TAC §218.71

The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 218, §218.71, Administrative Penalties.

#### EXPLANATION OF PROPOSED AMENDMENTS

The proposed amendments set out the administrative process the department will use to enforce certain federal interstate household goods laws and regulations via a state administrative proceeding. The federal laws and regulations are consumer protection provisions that apply to individual shippers and are related to the delivery and transportation of household goods in interstate commerce. The proposed amendments help the department implement the Memorandum of Agreement between the Federal Motor Carrier Safety Administration (FMCSA) and the department, executed on August 14, 2012.

Amendments to §218.71(a) clarify that the department has authority to enforce certain federal laws and regulations.

The amendment to §218.71(b) clarifies that the existing penalty provisions in subsection (b) apply to violations of state laws, rules, or orders.

New §218.71(c) is proposed to notify interstate motor carriers and brokers that the department has authority to enforce certain federal laws and regulations, pursuant to the Memorandum of Agreement between FMCSA and the department under 49 U.S.C. 14710.

New §218.71(d) sets out the administrative process the department will use to enforce certain federal interstate household

# Texas Commission on Environmental Quality



## **ORDER ADOPTING REPEALED AND AMENDED RULES**

**Docket No. 2013-1390-RUL**

**Rule Project No. 2013-050-330-WS**

On July 2, 2014, the Texas Commission on Environmental Quality (Commission) adopted amended Sections 330.7, 330.671, 330.673, and 330.675 in 30 Texas Administrative Code Chapter 330, concerning Municipal Solid Waste; and repealed Sections 339.1 – 339.3 of 30 TAC Chapter 339, concerning Groundwater Protection Recommendation Letters and Fees. The proposed rules were published for comment in the January 31, 2014 issue of the *Texas Register* (39 TexReg 466 and 478).

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended and repealed rules are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The adopted rules and the preamble to the adopted rules are incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Government Code, § 2001.033.

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

Date Issued:

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

---

Bryan W. Shaw, Ph.D., P.E., Chairman