

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §§330.601, 330.602, and 330.603, concerning fees and reports. Amended §§330.601 and 330.602 are adopted with changes to the proposed text as published in the September 4, 1998, issue of the *Texas Register* (23 TexReg 8998) and will be republished. Amended §330.603 is adopted without changes and will not be republished.

#### EXPLANATION OF ADOPTED RULES

The purpose of the amendments is to delete §330.602(a)(8), which references §330.804. Section 330.804, which related to a reduction in solid waste disposal fees for landfills that beneficially use tire shreds, expired on December 31, 1996, and has been repealed. Section 330.602(a)(8) also expired on December 31, 1996, but remained in the commission's rules. The amendments also clarify the method of reporting the amount of waste received at a solid waste disposal facility by defining "waste received for disposal" to ensure that the correct amount of fees is paid by all facility operators.

#### FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act, and it does not meet any of the four applicability requirements listed in §2001.0225(a). Specifically, the rulemaking is not directly related to and does not result in any decrease in the protection of the environment or human health; rather, it only clarifies a requirement of state law. The rulemaking clarifies the process for the calculation of municipal solid waste fees as authorized by Texas Health and

Safety Code, §361.013. The rulemaking is not the result of any federal law or mandate and is not the result of any delegation agreement or contract with an agency of the federal government. The purpose of the amendments is to delete §330.602(a)(8), which references §330.804. Section 330.804, which related to a reduction in solid waste disposal fees for landfills that beneficially use tire shreds, expired on December 31, 1996. The amendments would also clarify the method of reporting the amount of waste received at a solid waste disposal facility to ensure that the correct amount of fees is paid by all facility operators. No comments on the proposed regulatory impact analysis were received.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rule amendments pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that assessment. The specific purpose of the amendments is to repeal an expired provision pertaining to the reduction of fees for the use of tire shreds for engineering purposes in landfill construction and to clarify the method of reporting the amount of waste received at a solid waste disposal facility to ensure that the correct amount of fees is paid by all facility operators. The rule amendments will substantially advance the specific purpose by deleting the expired provision and explicitly explaining that the reporting of the amount of waste received for disposal fee purposes must be consistent with the total amount of the waste (measured in tons or cubic yards, or determined by the population equivalent method specified in §330.603(a)(3)) received by a disposal facility at the gate, excluding only those wastes which are recycled or exempted from payment of fees by rule or law. Promulgation and enforcement of these rule amendments will not affect or create a burden on private real property because the amendments only

provide clarification to municipal solid waste facility operators on how to properly calculate and report the amounts of waste received for disposal.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program (CMP), nor will affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the rule amendments are not subject to the CMP.

#### HEARINGS AND COMMENTERS

The commission did not hold a public hearing on the proposed rule changes. The comment period for the proposed rules closed at 5:00 p.m., October 5, 1998. Comments were received from the Texas Chapter, National Solid Wastes Management Association (NSWMA); East Texas District, Olympic Waste Services (Olympic); and a district manager from Trinity Waste Services (Trinity).

NSWMA recommended, with respect to the proposed change in §330.601(b)(1), that the phrase “(measured in tons or cubic yards)” be added to clarify that disposal facility operators have the option to use weight or volume.

**The commission agrees with the recommendation and has incorporated the change.**

NSWMA recommended, with respect to the proposed changes in §330.602(a)(2) and (b)(2), that “The volume or weight reported on the quarterly solid waste summary report must be consistent with the volume or weight on which tipping fees were charged, or would have been charged in the ordinary course of business, at the receipt of the waste at the gate” be changed to “The volume or weight reported on the quarterly solid waste summary report must be consistent with the **actual** volume or **weight of the waste received for disposal.**” It also recommended that language be added to both paragraphs requiring that a facility operator who charges tipping fees at the gate by a method other than volume or weight must weigh all waste received for disposal and report that weight on the quarterly solid waste summary report. NSWMA commented that the commission would be exceeding its statutory authority if it were to require a facility operator that charges for disposal either by weight or volume to report the amount of waste for calculating the state fee in the same unit of measurement as the operator charges for disposal services.

**The commission believes that the general statutory authority under Health and Safety Code, §361.011, to exercise all powers necessary or convenient to carry out its responsibilities, gives the commission authority to establish the method for payment of fees. It also believes that the same authority exists for requiring that the waste be weighed when the facility operator charges tipping fees based on a method other than by weight or volume. However, the commission believes that with the changes being adopted, the desired effect will be achieved without requiring that the payment of fees be based on the same unit of measurement as the one used by the operator to charge for disposal services, or without requiring an operator to weigh the incoming waste when he charges tipping fees on a method other than by weight or volume which can readily be**

**calculated from the amount of tipping fees charged. The commission believes that requiring the actual volume or weight to be reported and requiring an operator to weigh the incoming waste when he charges tipping fees on a method other than by volume or weight will establish a conflict with the flexibility now allowed for small landfill operators to report waste received on a population-equivalent basis. Therefore, instead of adopting all of the recommended language, the commission adopts as an alternative: “The volume or weight of the waste received for disposal shall be determined prior to disposal or processing of the waste.” This will provide an operator the flexibility to select the unit of measure to report the waste received at the gate, maintaining the highest degree of accuracy. In connection with this change, the text in §330.602(a)(3) and (b)(3) has been modified to more specifically identify the documentation required for reporting purposes.**

Comments submitted by Olympic and Trinity were in support of the comments and recommendations submitted by NSWMA.

**The commission’s responses to the NSWMA comments and recommendations respond to the Olympic and Trinity comments.**

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas; and the Solid Waste Disposal Act (Act), Texas Health and

Safety Code, §361.024, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the Act, and §361.013(a), which establishes the rates and basis for solid waste disposal fees to be charged.

**SUBCHAPTER P : FEES AND REPORTING**

**§§330.601-330.603**

**§330.601. Purpose and Applicability.**

(a) (No change.)

(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 commission 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 §330.603(a)(3) of this title (relating to Reports)) received by a disposal facility at the gate, excluding only those wastes which 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 yard waste composted at a composting facility, including a composting 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 which has been separated and has not been commingled with any other waste material at the point of generation. The commission will credit any fee payment due under this subchapter for any material received and converted to compost product for composting through a composting process. Any compost or product for composting that is not used as compost and is deposited in a landfill or used as landfill daily cover is not exempt from the fee.

(2) - (4) (No change.)

**§330.602. Fees.**

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

(1) (No change.)

(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 §330.601(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 commission at an amount equal to \$1.25 per ton.

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

(iii) The fee for uncompacted waste reported in cubic yards will be calculated by the commission at an amount equal to \$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 §330.603(a)(3) of this title (relating to Reports), the fee for such waste received shall be calculated by the commission at an amount equal to \$1.25 per ton.

(3) Fee calculation. The fee shall be calculated by the commission using information obtained from the quarterly solid waste summary report. The total cubic yards or tonnage reported to the commission 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 §330.603(a)(3), and records of recycled materials or any other information deemed relevant by the executive director. A billing statement will be generated quarterly by the commission and forwarded to the applicable permittee/registrant or a designated representative.

(4) - (7) (No change.)

(b) Incinerators and processes for disposal. Each operator of a facility that disposes of or processes municipal solid waste for disposal by means other than landfilling is required to pay a fee to the commission 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) (No change.)

(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 §330.601(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 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 commission at an amount equal to \$0.62 and one half cent per ton.

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

(iii) The fee for uncompacted waste reported in cubic yards will be calculated by the commission at an amount equal to \$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 §330.603(a)(3) of this title (relating to Reports), the fee shall be calculated by the commission at an amount equal to \$0.62 and one half cent per ton.

(3) Fee calculation. The fee shall be calculated by the commission using information obtained from the quarterly solid waste summary report. The total cubic yards or tonnage reported to the commission 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 §330.603(a)(3), and records of recycled materials or any other information deemed relevant by the executive director. A billing statement will be generated quarterly by the commission and forwarded to the applicable permittee/registrant or a designated representative.

(4) - (7) (No change.)

(c) (No change.)

**§330.603. Reports.**

(a) Disposal facilities and processes.

(1) (No change.)

(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) - (B) (No change.)

(3) - (5) (No change.)

(6) Method of submission. The required report shall be delivered or mailed to the Texas Natural Resource Conservation Commission to the return address designated by the commission in the billing statement distributed quarterly.

(7) (No change.)

(b) Facilities and processes not for disposal. Facilities and processes not for disposal (as defined in §330.602(c) of this title (relating to Fees)) are subject to reporting requirements but are not required to pay a fee.

(1) - (4) (No change.)

(5) Method of submission. The required report shall be delivered or mailed to the Texas Natural Resource Conservation Commission to the return address designated by the commission in the billing statement distributed quarterly.

(6) (No change.)