

SUBCHAPTER A: PURPOSE AND GENERAL INFORMATION

§§328.1 - 328.5

Effective September 10, 2009

§328.1. Purpose.

The purpose of this chapter is to establish regulations that support the diversion of materials from solid waste streams, to promote the economic recovery and reuse of materials, and to support the development of markets for recycled, remanufactured or environmentally sensitive products or services in a sustainable manner that protects the environment, public health and safety.

Adopted August 11, 1999

Effective September 5, 1999

§328.2. Definitions.

The following terms, when used in this subchapter, have the following meanings. Other definitions may be found in Chapters 3, 330, and 332 of this title (relating to Definitions; Municipal Solid Waste; and Composting).

(1) **Affiliated with**--A person, "A" is affiliated with another person, "B," if either of the following two conditions applies:

(A) "A" owns or controls more than 20% of the voting interest, fair market value, profits, proceeds, or capital gains of "B"; or

(B) "B" owns or controls more than 20% of the voting interest, fair market value, profits, proceeds, or capital gains of "A."

(2) **Completely drained**--For the purposes of Texas Occupations Code, §1956.103(c), regarding the sale or transfer of a fuel tank to a metal recycling entity on or after January 1, 2006, a fuel tank is completely drained if:

(A) all fuel has been removed that can be removed using practices commonly employed to remove fuel from a tank, e.g., pouring, pumping, and aspirating;

(B) the procedures used to remove fuel from the tank conform with accepted industry practices; and

(C) the tank is emptied of all accumulated sludges or residues, and is purged of all residual vapors in accordance with accepted industry procedures commonly employed for the type of fuel.

(3) **Incidental amount(s) of non-recyclable waste or incidental non-recyclable waste**--Non-recyclable waste that accompanies recyclable material despite reasonable efforts to maintain source-separation and that is no more than 10% by volume or scale weight of each incoming load, and averages no more than 5% of the total scale weight or volume of all materials received in the last six-month period,

as substantiated by the facility's records. The practices and standards of recycling facilities of a particular type will be considered by the executive director to allow alternative compliance with these standards on a case-by-case basis, as provided for in §328.4(e) of this title (relating to Limitations on Storage of Recyclable Materials). Reasonable efforts to maintain source-separation must include: having dual collection and transportation systems in place for recyclable material and non-recyclable waste at the point of generation; having informed generators and haulers of the source-separation requirements; and the recycling facility having instituted quality control measures including, at a minimum, inspection of incoming loads and rejection by the recycling facility of those loads that would cause the facility to exceed these percentages as described in this paragraph. After incoming loads are processed for recycling, all resulting non-recyclable waste must be managed according to the requirements of this chapter or taken to an authorized solid waste facility within one week. Incidental amount(s) of non-recyclable waste does not include non-recyclable components that are integral to recyclable material, including:

(A) the non-recyclable components of white goods, whole computers, whole automobiles, or other manufactured items for which dismantling and separation of recyclable from non-recyclable components by the generator are impractical, such as insulation or electronic components in white goods;

(B) source-separated recyclable material rendered unmarketable by damage during collection, unloading, and sorting, such as broken recyclable glass; and

(C) tramp materials, such as:

(i) glass from recyclable metal windows;

(ii) nails and roofing felt attached to recyclable shingles;

(iii) nails and sheetrock attached to recyclable lumber generated through the demolition of buildings; and

(iv) pallets and packaging materials.

(4) **Processed for recycling or processing for beneficial use**--Material has been or is processed for recycling, or undergoes processing for beneficial reuse, if it has been subjected to activities including extraction or separation of component materials (such as the separation of commingled recyclable materials), cleaning, grinding, or other preparation at a recycling facility to make it amenable for subsequent recycling or beneficial reuse.

(5) **Secondary metals recycling facility**--A facility that:

(A) is predominately engaged in the business of obtaining ferrous or nonferrous metals that have served their original economic purpose in order to convert those metals, or to sell those metals for conversion, into raw material products consisting of prepared grades and having an existing or potential economic value;

(B) has the capability for performing the process by which ferrous or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, other than by the exclusive use of hand tools, by methods including, without limitation, the processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content thereof; and

(C) sells or purchases those ferrous or nonferrous metals solely for purposes of use in the form of raw materials in the production of new products.

(6) **Source-separated recyclable material**--Recyclable material from residential, commercial, municipal, institutional, recreational, industrial, and other community activities, that at the point of generation has been separated, collected, and transported separately from municipal solid waste, or transported in the same vehicle as municipal solid waste, but in separate containers or compartments. Source-separation does not require the recovery or separation of non-recyclable components that are integral to a recyclable product, including:

(A) the non-recyclable components of white goods, whole computers, whole automobiles, or other manufactured items for which dismantling and separation of recyclable from non-recyclable components by the generator are impractical, such as insulation or electronic components in white goods;

(B) source-separated recyclable material rendered unmarketable by damage during collection, unloading, and sorting, such as broken recyclable glass; and

(C) tramp materials, such as:

(i) glass from recyclable metal windows;

(ii) nails and roofing felt attached to recyclable shingles;

(iii) nails and sheetrock attached to recyclable lumber generated through the demolition of buildings; and

(iv) pallets and packaging materials.

(7) **Unusable**--For the purposes of Texas Occupations Code, §1956.103(c) regarding the sale or transfer of a fuel tank to a metal recycling entity on or after January 1, 2006, a fuel tank is rendered unusable if the tank is completely drained and can no longer be used because it has been punctured, ruptured, crushed, shredded, or has other significant structural changes or alterations.

Adopted November 30, 2005

Effective December 22, 2005

§328.3. General Requirements.

(a) All recycling facilities shall comply with all applicable regulations of the commission, all applicable federal laws and regulations, as well as, without limitation, the following state laws, as applicable:

- (1) Texas Solid Waste Disposal Act, Texas Health and Safety Code (THSC), Chapter 361;
- (2) Texas Litter Abatement Act, THSC, Chapter 365;
- (3) Texas Toxic Chemical Release Reporting Act, THSC, Chapter 370;
- (4) Texas Clean Air Act, THSC, Chapter 382;
- (5) Texas Radiation Control Act, THSC, Chapter 401; and
- (6) Texas Water Code (TWC), Chapter 26 (relating to Water Quality Control).

(b) Violations of state laws or regulations are subject to enforcement by the commission and may result in the assessment of civil or administrative penalties under TWC, Chapter 7 (relating to Enforcement).

Adopted August 21, 2002

Effective September 12, 2002

§328.4. Limitations on Storage of Recyclable Materials.

(a) The provisions of subsections (e) and (f) of this section are available to all recycling facilities. In accordance with §§330.11(e)(2), 332.3(d), and 332.23(5) of this title (relating to Notification Required; Applicability; and Operational Requirements), in order to be exempt from the registration and permit requirements under Chapter 330 of this title (relating to Municipal Solid Waste) or under Chapter 332 of this title (relating to Composting), a facility must comply with the requirements of this section unless:

(1) the owner or operator of the facility is a local government or an agency of the state or the federal government;

(2) the facility receives more than 50% of its recyclable material directly from any combination of generators not affiliated with the facility, from the public, or from haulers not affiliated with the facility; the facility receives no financial compensation to accept any of the recyclable material it receives; and the facility accumulating the recyclable material can show that the material is potentially recyclable and has an economically feasible means of being recycled; or

(3) the facility smelts recyclable metals or the facility is a secondary metals recycling facility affiliated with a smelter of recyclable metals, including the operations conducted and materials handled at the facility, provided that the owner or operator of the facility demonstrates that:

(A) the primary function of the facility is to process materials that have a resale value greater than the cost of processing the materials for subsequent beneficial use; and

(B) all the solid waste generated from processing the materials is disposed of in a solid waste facility authorized under Texas Health and Safety Code, Chapter 361 (concerning the Solid Waste Disposal Act), with the exception of small amounts of solid waste that may be inadvertently and unintentionally disposed of in another manner;

(4) the facility is owned or operated by, or affiliated with, a person who holds a permit to dispose of municipal solid waste.

(b) Recyclable material may be accumulated or stored at a recycling facility only under the following conditions:

(1) the facility accumulating it can show that the material is potentially recyclable and has an economically feasible means of being recycled;

(2) within 270 days after the effective date of this rule, or 270 days from the commencement of a new facility's operations, the amount of material recycled, or transferred to a different site for recycling, equals at least 25% by weight or volume of the material accumulated 90 days from the effective date of this rule or 90 days from the commencement of a new facility's operation; and

(3) during each subsequent six-month period, the amount of material that is recycled, or transferred to a different site for recycling, equals at least 50% by weight or volume of the material accumulated at the beginning of the period.

(A) In calculating the percentage of turnover, the percentage requirements are to be applied to each material of the same type.

(B) For the purposes of this section, the following materials shall not be considered to be accumulated, but shall be considered to be recycled, as long as they have been contained, covered, or otherwise managed to protect them from degradation, contamination, or loss of value as recyclable material:

(i) materials for mulching and composting facilities that have been ground for use as mulch, or compost, or prepared and placed in a windrow, static pile, or vessel for composting; or

(ii) materials for other recycling facilities that have been processed for recycling.

(c) A recycling facility that fails to comply with the requirements of this section shall be required, if the executive director so requests in writing, to obtain a permit or registration as a municipal solid waste facility under the provisions of Chapter 330 or Chapter 332 of this title. A facility that receives large quantities of materials as a result of a disaster or other circumstance beyond its control, and a mulching or composting facility that must accumulate a certain volume of materials in order to obtain grinding services from a contractor may not be subject to one or more of the requirements of subsection

(b) of this section as determined by the executive director on a case-specific basis for a specified period of time as provided for in subsection (e) of this section.

(d) A facility that processes recyclable material that contains more than incidental amounts of non-recyclable waste must obtain a permit or registration as applicable under Chapter 330 or Chapter 332 of this title unless the executive director approves its request for alternative compliance.

(e) The executive director will use the following procedures in evaluating applications for alternative compliance with the standards in the definition of "Incidental amount(s) of non-recyclable waste" in §328.2 of this title (relating to Definitions) or with the requirements of subsection (b) of this section.

(1) The applicant must apply in writing to the executive director for the alternative compliance. The application must address the relevant criteria contained in subsection (f) of this section.

(2) The executive director will evaluate the application and issue a letter granting or denying the application. Any person affected by the decision of the executive director may file with the chief clerk a motion to overturn according to the procedures set out in §50.139(b) - (g) of this title (relating to Motion to Overturn Executive Director's Decision). The executive director may revoke an alternative compliance for good cause.

(f) The executive director may grant requests for alternative compliance if the applicant submits sufficient documentation demonstrating that the applicant cannot meet the requirements in the definition of "Incidental amount(s) of non-recyclable waste" in §328.2 of this title without affecting the ability to support related recycling activities. Failure to qualify for alternative compliance will subject the applicant to the permitting or registration requirements of Chapter 330 or Chapter 332 of this title. The executive director's decision will be based on the following factors:

(1) whether the application is for a single facility or for facilities of a similar type recycling the same kind of material;

(2) the locations of all facilities to be covered by the alternative compliance;

(3) the type(s) of material(s) accepted for recycling;

(4) any storage of materials prior to recycling;

(5) how the material(s) are recycled;

(6) the amount of and reasons for unavoidable damage to incoming material during collection, unloading, and sorting that renders the material unmarketable;

(7) reasons that data on tramp or damaged materials cannot be separated from data on other non-recyclable waste;

(8) reasonable efforts used at the facility or facilities to maintain and enforce source-separation, or reasons why source-separation cannot be practicably maintained and enforced at the facility or facilities;

(9) the amount and type of non-recyclable waste disposed of by the facility or facilities, the method of disposal, and the amount of time between receiving the waste and disposal;

(10) the prevalence of the practice on an industry-wide basis, or on the basis of other similar facilities recycling the same kind of material;

(11) reasons why alternative compliance would be protective of the environment and human health and safety; and

(12) other relevant factors.

(g) A municipal solid waste recycling facility that produces mulch or compost that is not required to have a permit or registration that stores combustible materials and is located in Bexar County shall comply with the following requirements of this subsection. This subsection applies to facilities that are exempt from other requirements of this section as provided in subsection (a) of this section.

(1) Storage time limits for combustible material. An amount equal to at least 90% by weight or volume of combustible materials accumulated at the beginning of a 12-month period must be removed from the facility during each subsequent 12-month period. The 12-month period begins on the day this subsection becomes effective for existing facilities, on the first day that materials are received for a new facility, or as otherwise approved by the executive director. If a volume-based demonstration is used, the owner or operator will apply an appropriate conversion factor, as specified in the notice of intent to operate the facility and as approved by the executive director, based on facility operations to convert volumes of incoming material to equivalent volumes of outgoing material. For composting processes that need longer than 12 months, the owner or operator may request a compliance period longer than 12 months from the accumulation of material to demonstrate 90% removal of material accumulated during an earlier 12-month period. Requests for a longer compliance period must be accompanied by a technical justification as well as any supporting information for the additional time. The conversion factor and alternate compliance period may be periodically reviewed by the executive director to ensure that material is being removed from the facility.

(2) Maximum volume of combustible material. A facility shall not store processed or unprocessed combustible material in excess of the maximum volume of material indicated in the current notice of intent to operate the facility submitted to the executive director.

(3) Time limits for processing. All combustible material stored by a facility to produce mulch or compost must be ground so that 100% has a particle size of six inches or less in at least one dimension and 90% has a particle size of six inches or less in all dimensions no later than 90 days after receipt. Material will not be considered processed until it is ground to the specified dimensions. Under certain circumstances, an owner or operator may request executive director approval for additional time to grind combustible materials up to 180 days after receipt of the material.

(4) Pile size limits. Each pile of combustible material shall have dimensions not to exceed 25 feet in height. Unprocessed combustible material shall not cover an area greater than 50,000 square feet at the facility, with no single pile exceeding 8,000 square feet. A pile of processed combustible material shall not cover an area greater than 25,000 square feet.

(5) Number of piles. The number of piles of combustible materials at the facility shall not exceed the maximum number specified in the notice of intent to operate the facility submitted to the executive director.

(6) Fire lanes between piles. There shall be a minimum separation of 40 feet from piles of unprocessed combustible materials and a minimum separation equal to the pile height between piles of processed combustible materials. An all-weather road shall encircle the area used for processing and storage of combustible material. At a minimum, this all-weather roadway shall have minimum 25-foot turning radii; shall be capable of accommodating firefighting vehicles during wet weather; and shall meet applicable local requirements and specifications. The open space between buildings and piles shall be kept open at all times; and be maintained free of combustible material, rubbish, equipment, or other materials. Upon coordination with the local fire marshal, the distance required may be increased, as necessary, to protect human health and safety.

(7) Buffer zone. The set back distance from all property boundaries to the edge of the areas receiving, processing, or storing material must be at least 50 feet.

(8) Recharge Zone or Transition Zone. Notwithstanding the applicability requirements of Chapter 213 of this title (relating to Required Edwards Aquifer Protection Plans, Notifications, and Exemptions), facilities located on a recharge or transition zone shall have a water pollution abatement plan consistent with the requirements of §213.5(b) of this title (relating to Required Edwards Aquifer Protection Plans, Notifications, and Exemptions).

(9) Notice of intent. By the effective date of this subsection for existing facilities or at least 90 days prior to commencing new operations, the owner or operator must file a notice of intent in accordance with §328.5(b) of this title (relating to Reporting and Recordkeeping Requirements) that also includes provisions to demonstrate compliance with this subsection. A revised notice of intent must be filed with the executive director before revising a volume conversion factor or before a facility exceeds the maximum amount of material to be stored as specified in the current notice of intent.

(10) Recordkeeping. The owner or operator of a facility subject to the requirements of this subsection must maintain all records necessary to demonstrate compliance with this subsection.

(11) Compliance. Failure to operate and maintain a facility as proposed in the current notice of intent for the facility is a violation of this chapter.

(12) Effective date. The requirements of this subsection do not become effective until one year after commission adoption of this subsection.

§328.5. Reporting and Recordkeeping Requirements.

(a) In order to be exempt from the registration and permit requirements under §330.4(f)(1)(B) of this title (relating to Permit Required) or under Chapter 332 of this title (relating to Composting), a facility must comply with the requirements of this section unless:

(1) the owner or operator of the facility is a local government or an agency of the state or the federal government;

(2) the facility receives more than 50% of its recyclable material directly from any combination of generators not affiliated with the facility, the public, or haulers not affiliated with the facility; the facility receives no financial compensation to accept any of the recyclable material it receives; and the facility accumulating the recyclable material can show that the material is potentially recyclable and has an economically feasible means of being recycled;

(3) the facility smelts recyclable metals or the facility is a secondary metals recycling facility affiliated with a smelter of recyclable metals, including the operations conducted and materials handled at the facility, provided that the owner or operator of the facility demonstrates that:

(A) the primary function of the facility is to process materials that have a resale value greater than the cost of processing the materials for subsequent beneficial use; and

(B) all the solid waste generated from processing the materials is disposed of in a solid waste facility authorized under Texas Health and Safety Code, Chapter 361 (concerning the Solid Waste Disposal Act), with the exception of small amounts of solid waste that may be inadvertently and unintentionally disposed of in another manner; or

(4) the owner or operator of the facility owns or operates a facility permitted to dispose of municipal solid waste, or is affiliated with a person holding a permit to dispose of municipal solid waste.

(b) Within 90 days of the effective date of this section or prior to the commencement of new operations, the owner or operator of a facility that serves as a collection and processing point for only non-putrescible source-separated recyclable materials, or for mulching or composting of only source-separated recyclable material shall report on a form or forms to be provided by the executive director, describing:

(1) the type(s) of material(s) accepted for recycling;

(2) any storage of materials prior to recycling;

(3) how the material(s) will be recycled; and

(4) any updates or changes to information contained in the facility report within 90 days of the effective date of the change.

(c) Closure cost estimates.

(1) Except as otherwise approved by the executive director, an owner or operator of a recycling facility that stores combustible material outdoors, or that poses a significant risk to public health and safety as determined by the executive director, shall provide a written cost estimate, in current dollars, showing the cost of hiring a third party to close the facility by disposition of all processed and unprocessed materials in accordance with all applicable regulations. The cost estimate for financial assurance must be submitted with any new registration application or at least 90 days prior to receipt of materials for new facilities; within 60 days of the effective date of this rule for existing facilities; or as otherwise requested by the executive director.

(2) The estimate must:

(A) equal the costs of closure of the facility, including disposition of the maximum inventories of all processed and unprocessed combustible materials stored outdoors on site during the life of the facility, in accordance with all applicable regulations;

(B) be based on the costs of hiring a third party that is not affiliated (as defined in §328.2 of this title (relating to Definitions)) with the owner or operator; and

(C) be based on a per cubic yard and/or short ton measure for collection and disposition costs.

(d) Financial assurance. An owner or operator of a recycling facility that stores combustible material outdoors, or that poses a significant risk to public health and safety as determined by the executive director shall establish and maintain financial assurance for closure of the facility in accordance with Chapter 37, Subchapter J of this title (relating to Financial Assurance for Recycling Facilities).

(e) Closure requirements.

(1) Closure must include collecting processed and unprocessed materials, and transporting the materials to an authorized facility for disposition unless otherwise approved or directed in writing by the executive director.

(2) Closure of the facility must be completed within 180 days following the most recent acceptance of processed or unprocessed materials unless otherwise approved or directed in writing by the executive director.

(f) The owner or operator of a facility subject to the requirements of this subchapter shall maintain all records necessary to show:

(1) compliance with the requirements of §328.4 of this title (relating to Limitations on Storage of Recyclable Materials); and

(2) reasonable efforts to maintain source-separation of materials received by the facility, including:

- (A) notice to customers of source-separation requirements;
 - (B) training of staff in the inspection of incoming loads to ensure that they contain no more than 10% incidental non-recyclable waste;
 - (C) documentation of loads that have been rejected for exceeding 10% incidental non-recyclable waste; and
 - (D) documentation that incidental non-recyclable waste constitutes no more than 5% of the average total scale weight or volume of all materials received in the last six-month period;
- (3) proof of financial assurance sufficient to cover all closure costs.
- (g) The owner or operator of a facility subject to the requirements of this section shall make these records available upon request to agents or employees of the executive director or of local governments with territorial or extra-territorial jurisdiction over the property on which the facility is located.
- (h) The owner or operator of a facility subject to the requirements of this section that manages combustible materials shall have a fire prevention and suppression plan that shall be made available to the local fire prevention authority having jurisdiction over the facility for review and coordination.

Adopted October 13, 2004

Effective November 4, 2004