

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §330.2. Section 330.2 is adopted *with change* to the proposed text as published in the April 26, 2002 issue of the *Texas Register* (27 TexReg 3532).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The purpose of the amendment is to implement certain requirements of House Bill (HB) 2912, Article 9, §9.03, 77th Legislature, 2001. HB 2912 became effective on September 1, 2001. HB 2912 amends Texas Health and Safety Code (THSC) by adding §361.119, which requires the commission to ensure solid waste processing facilities are regulated as solid waste facilities and are not allowed to operate unregulated as recycling facilities. Corresponding changes to 30 TAC Chapter 328, Waste Minimization and Recycling; and 30 TAC Chapter 332, Composting, are published in the Adopted Rules section of this issue of the *Texas Register*. The adopted amendment to §330.4, Permit Required (Rule Log Number 2001-082-328-WS) that was proposed in a separate rulemaking at the March 13, 2002 commission agenda is also published in the Adopted Rules section of this issue of the *Texas Register*.

SECTION DISCUSSION

Section 330.2. Definitions, adds the definition for “Source-separated recyclable material.” The definition of “Source-separated recyclable material” has been changed since proposal by adding pallets and packaging material to the list of tramp materials. The definition of “Incidental amount(s) of non-recyclable waste” has been deleted from this section and added to §328.2, because the term is no longer used in Chapter 330. The remaining definitions have been renumbered. Language has been added to the definition of “Storage” to be consistent with the language in §330.4.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rule is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in that statute. Although the intent of the rule is to protect the environment or reduce risks to human health from environmental exposure, the rule will not have an adverse material impact on 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 because the proposed amendment to Chapter 330 is intended to identify and affect only those facilities improperly processing municipal solid waste without an authorization and, therefore, does not meet the definition of a major environmental rule. Furthermore, the adopted rule does not meet any of the four applicability requirements listed in §2001.0225(a). This rule does not exceed any standard set by federal law for distinguishing facilities improperly processing municipal solid waste from legitimate recycling facilities, and this rule is specifically required by state law under THSC, §361.119. This rule does not exceed the requirements of state law under THSC, §361.119, and is not required by federal law. There is no delegation agreement or contract between the state and an agency or representative of the federal government to implement any state and federal program to distinguish facilities improperly processing municipal solid waste without authorization from legitimate recycling facilities. This rule is not adopted solely under the general powers of the agency, but rather specifically under THSC, §361.119, as well as the other general powers of the agency.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rule and performed an analysis of whether Texas Government Code, Chapter 2007 is applicable. The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this rule because this is an action taken to prohibit or restrict a condition or use of private real property that constitutes a public or private nuisance, which is exempt under Texas Government Code, §2007.003(b)(6). Specifically, the statutory basis for this rule, THSC, §361.119, directs the commission to develop this rule to ensure that a solid waste processing facility is regulated as a solid waste facility under the Texas Solid Waste Disposal Act and is not allowed to operate unregulated as a recycling facility, and to ensure that recyclable material is reused and not abandoned or disposed of and that recyclable material does not create a nuisance or threaten or impair the environment or public health and safety. Garbage or other organic wastes deposited, stored, discharged, or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons is a public health nuisance by law under THSC, §341.011(5). A facility that operates without appropriate controls can become a private nuisance.

Nevertheless, the commission further evaluated this rule and performed an analysis of whether this rule constitutes a takings under Texas Government Code, Chapter 2007. The specific purpose of this rule is to ensure that recyclable material is reused and not abandoned or improperly disposed of, and that recyclable material does not create a nuisance or threaten or impair the environment or public health and safety. The rule would substantially advance the stated purpose by requiring recordkeeping and reporting and imposing limitations on the storage of recyclable material. The records are required to be

kept and will assist agency enforcement staff to easily distinguish legitimate recycling facilities from municipal solid waste facilities operating without proper authorization.

Promulgation and enforcement of this rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the rule does not affect a landowner's rights in private real property because this rule does not burden (constitutionally), nor restrict or limit the owner's right to property, or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, this rule does not prevent property owners from operating legitimate recycling facilities, which reuse or recycle materials and thus legitimately protect the environment and public health and safety by reducing the volume of the municipal solid waste stream.

There are no burdens imposed on private real property, and the benefits to society are facilities properly and legitimately recycling materials and reducing the volume of the municipal solid waste stream and facilities properly and legitimately processing municipal solid waste with appropriate environmental and health and safety controls. Therefore, the rule will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rule and found that the rule is identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and will affect an action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11 and, therefore, the applicable goals and policies of the Texas Coastal Management Program (CMP) have been considered during the rulemaking

process. The CMP goal applicable to this rule is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs) in accordance with 31 TAC §501.12(l). The CMP policy applicable to this rule is 31 TAC §501.14(d)(1) and (2). In accordance with §501.14(d)(1), the construction and operation of solid waste facilities in the coastal zone shall comply with all policies for CNRAs relating to the construction and operation of solid waste treatment, storage, and disposal facilities for both new facilities and areal expansion of existing facilities. In accordance with §501.14(d)(2), the commission shall comply with all policies for CNRAs when issuing permits and adopting rules under THSC, Chapter 361.

The specific purpose of the rule is to make existing commission rules consistent with the new legislative changes made to THSC by HB 2912. The rule requires the commission to ensure solid waste processing facilities are regulated as solid waste facilities and are not allowed to operate unregulated as recycling facilities. The commission anticipates that promulgation and enforcement of the rule will not have a direct or significant adverse effect on any CNRAs, nor will the rule have a substantial effect on commission actions subject to CMP. Therefore, the commission has made a finding of consistency with the applicable goals and policy. The commission solicited public comment, but no comments were received.

PUBLIC COMMENT

The public comment period closed on June 7, 2002. A total of 18 commenters provided both general and specific written comments on the proposed rules. The commenters are: Abitibi-Consolidated Inc. (ACI); Balcones Recycling (BR); City of Fort Worth; City of Houston (COH); Community Waste

Disposal, Inc. (CWD); Department of the Air Force; El Paso Disposal, LP (EPD); Goodwill Industries; Harris County Commissioners Court (HCCC); Harris County Public Health & Environmental Services (HCPH&ES); Representative Charlie F. Howard; I-27 Recycling & Public Scales (I-27); Novus Wood Group (NWG); Silver Creek Materials Recycling & Compost (SCMR&C); Texas Chapter National Solid Wastes Management Association (NSWMA); Trinity Waste Services (TWS); Waste Management (WM); and one individual.

RESPONSE TO COMMENTS

ACI commented that it supports the intent of the proposed rule, but is concerned the rule will discourage legitimate recycling. ACI commented that the proposed definition of “Incidental amount(s) of non-recyclable waste” in §330.2(59) is too restrictive. The determination of the percentage by volume of non-recyclable material is problematic. The proposal does not suggest how inspections are to be performed. Unless the shipment was grossly over the percentage and, through visual inspection, was unquestionably above the percentage, an accurate determination cannot be made without unloading and processing the material. The percentage was to be determined for each incoming load. This requirement would be difficult to implement without a definitive compliance method, and would be subject to the potential for arbitrary compliance determinations. ACI also commented that the 5% limitation for each load had no reasonable basis. If the intent of the proposal was to address sham recycling operations, ACI recommended that this limitation be evaluated on an aggregate basis. In addition, the agency should consider the impact of the proposed requirement that all resulting non-recyclable waste be taken to an authorized solid waste facility within one week. ACI recommends that instead of focusing on a percentage limitation on a per load basis, the agency should evaluate the

feasibility of regulations that address the legitimacy of the processing facilities. This could be accomplished through tracking the end use of the materials accepted for processing. “Do the recovered materials have a market? Are the materials being shipped off-site for recovery and re-use? Are the residuals for processing being properly managed for off-site disposition?” Another alternative is for the rules to exempt processing facilities that receive more than two-thirds of incoming material from residential curbside and/or drop-off programs.

The commission agrees with ACI’s contention that the proposed definition of “Incidental amount(s) of non-recyclable waste” in proposed §330.2(59) was too restrictive, in light of similar comments from several other legitimate public and private sector recyclers that contribute significantly to recycling in Texas. The commission also recognizes the inability of a processing facility to exercise total control over the amount of non-recyclable waste in each incoming load, despite reasonable efforts to maintain source-separation, and the likelihood of non-recyclable waste in excess of 5% being present in any given load. The commission is also committed to the state’s legislated recycling goals and its policy preference for recycling over landfilling as a waste management strategy. In addition, in response to other comments in writing and at the August 7, 2002 commission agenda, the proposed definition has been moved to §328.2 and the reference to “incidental amounts of non-recyclable waste” made in §328.4 and §328.5 in order to clarify to which facilities the definition applies.

Therefore, the proposed definition in §328.2 has been amended to establish an upper limit of 10% on the scale or weight or volume of non-recyclable waste that may constitute “incidental non-

recyclable waste” in any single load of recyclable material received by a facility, and a limit of 5% on the average scale weight or volume of non-recyclable waste in all materials received by a facility in the last six-month period. Additional language has been included in the definition to allow for flexibility in the application of this standard on a case-by-case basis, in consideration of the practices and standards of recycling facilities of a particular type, and pallets and packaging have been added to the list of examples of “tramp materials” excluded from the definition. However, this less restrictive definition is not intended to weaken or obstruct the intent of the enabling statute, which is to draw a clearer distinction between legitimate recycling facilities and solid waste facilities that currently operate unregulated under the guise of recycling facilities. To make this distinction, and to hold recyclers accountable for the responsible disposition of the materials they handle, the commission has adopted significant restrictions on the storage of unprocessed recyclable materials under §328.4, and reporting and recordkeeping requirements to substantiate them in §328.5. A procedure for demonstrating alternative compliance with the definition of “Incidental amount(s) of non-recyclable waste” has been added to the definition since proposal. To ensure that alternative compliance be available to the appropriate sectors of the regulated community, the definition has been moved to §328.2. The commission agrees that materials accepted for recycling should be both recyclable and recycled, and has adopted rules to establish these requirements in proposed §328.4.

The commission has considered the impact of the requirement that, following processing by a recycling facility, all resulting non-recyclable waste be taken to an authorized solid waste facility within one week. Because this may impose disposal requirements on a recycling facility that do

not apply to other generators of solid waste, the proposed rule has been amended to require recycling facilities to dispose of resulting non-recyclable waste according to the provisions of Chapter 330, or taken to an authorized solid waste facility within one week.

The commission disagrees with the suggestion that facilities that receive two-thirds of their materials from public collection programs should be exempted from the rule, as this would eliminate practical distinctions between legitimate recyclers and unscrupulous solid waste facilities. The commission has made no changes in response to this comment.

BR commented that the proposed definition of “Incidental amount(s) of non-recyclable waste” would place an unreasonable demand and hardship on paper recycling operations. Recyclable paper can be delivered to a paper recycling facility in a variety of ways, including enclosed containers (i.e., compactor receiver boxes and front-end-load trucks). The contents of these containers cannot be inspected until after they are dumped onto the processing floor, at which time it would be too late to reject the load. To subject each individual load to a threshold of (5% or any other percent) does not necessarily reflect the overall volume of trash that could pass through a facility. All containers entering a facility are weighed upon entry (full) and exit (empty). The contents are then separated as trash and marketable commodities and shipped out to either a landfill or mill, respectively. Therefore, the only accurate measure of trash (as a percentage of total material brought in for processing) at a recycling facility would be to divide the weight (not volume) of the trash sent to a landfill, by the total weight of material that entered the facility. BR provided the following suggested language: “(59) Incidental amount(s) of non-recyclable waste - Non-recyclable material that accompanies recyclable material

despite reasonable efforts to maintain source-separation and that is no more than 5% by weight of the total incoming material during the reporting period. Reasonable efforts to maintain source-separation must include: having dual collection and transportation systems in place for recyclable and non-recyclable materials at the point of generation; having informed generators and haulers of the source-separation requirements; and the recycling facility having instituted quality control measures.”

The commission agrees with the assertion that the proposed definition of “Incidental amount(s) of non-recyclable waste” would place an unreasonable demand and hardship on paper recycling operations. Therefore, the proposed definition has been amended to establish an upper limit of 10% on the scale weight or volume of non-recyclable waste that may constitute “incidental non-recyclable waste” in any single load of recyclable material received by a facility, and a limit of 5% on the average scale weight or volume of non-recyclable waste in all materials received by a facility in the last six-month period. Additional language has been included in the definition to allow for alternative compliance with the standards in the definition on a case-by-case basis, in consideration of the practices and standards of recycling facilities of a particular type. A procedure for demonstrating alternative compliance with the definition of “incidental amount(s) of non-recyclable waste” has been added to the definition since proposal. To ensure that alternative compliance be available to the appropriate sectors of the regulated community, the definition has been moved to §328.2. Pallets and packaging have been added to the list of examples of “tramp materials” excluded from the definition.

The commission recognizes that many recyclable materials, including glass, metal, paper, and plastic, are commonly sold by the pound or by the ton. However, many smaller facilities do not have scales on-site, but rely on scale weights provided by the buyers of their materials. In addition, many landfills do not have scales; and mulch, compost, and materials reused or recycled as aggregate substitutes are commonly traded by their volume in cubic yards. Requiring the purchase, certification, and maintenance of scales simply for the purpose of proving their regulatory compliance is not an obligation that is appropriate for all legitimate recyclers. Therefore, calculations of incidental non-recyclable waste may be made by either weight or volume measurements.

CWD commented that the proposed rule was clearly anti-recycling and will do nothing but put a lot of small, honest entrepreneurial recycling companies out of business. CWD urged the commission to not implement the proposed rule in its current form.

The commission has made amendments to the proposed rule to ensure that it will not have a detrimental impact on legitimate recyclers. While the adopted contains restrictions on facilities to draw a clearer line between legitimate recyclers and unscrupulous solid waste processors, this increased accountability is intended to ensure that neither legitimate recyclers nor legitimate disposal facilities suffer from unfair competition from unregulated solid waste facilities. The proposed rule is further intended to safeguard the public from the health and safety threats posed by the mismanagement of solid waste.

City of Fort Worth commented that it fully supports the intent of the proposed rule changes to control improper or sham recycling operations. However, the City of Fort Worth was concerned about the rule change in §330.2(59), “Incidental amount(s) of non-recyclable waste,” and stated that curbside recycling programs operating “single stream” collections (commingled source-separated recyclables) could exceed the 5% limit. City of Fort Worth proposed that a bi-regulatory system be established. This system would keep the 5% rule intact for companies that accept recyclable material exclusively from commercial entities. The 5% rule would not apply to the recyclable waste stream generated by companies that receive material from both public and private sources. COH commented that it fully supports the intent of the proposed changes to control improper or sham recycling operations. COH was concerned with the definition of “Source-separated recyclable material” because a large percentage of material collected by COH is delivered in a commingled form. If these materials included in the commingled recycled collection process were classified as non-recyclable waste, this incidental amount could exceed the 5% limit as currently written in the proposed rule. COH suggested that the requirement for inspection and rejection of incoming loads from public recycling be allowed to exceed the 5% non-recyclable waste requirement. WM commented that the definition of “Incidental amount(s) of non-recyclable waste” focusing on each load appeared arbitrary. The basis for the percentage was unclear. WM contended that a capricious standard will deal a devastating blow to recycling in the state and result in the unintended consequence of landfilling tons of residential and commercially generated recyclables in an abundance of caution to avoid a citation by the commission inspector. Furthermore, in a single stream recycling system where recyclables are collected in a cart using an automated collection system, the recycling collector and processor will be required to control what is put in that cart and ultimately tipped at the recycling facility. It would be extremely difficult and resource

consumptive to comply with these standards. In many cases, the recycling processor is not responsible for any of the public education of the citizenry and is merely operating as an extension of the municipality. In these cases, the processor should not be subject to rules adopted under this section as set forth in HB 2912, Article 9, §361.119(e).

The commission appreciates the difficulties of complying with a 5% limit on non-recyclable waste, particularly in a single-stream curbside collection program. However, the commission disagrees with the suggestion of establishing separate standards for facilities that receive materials from public sources and those that receive materials exclusively from commercial entities. Such a distinction would weaken the basic performance-based standards established by the definition of “Incidental amount(s) of non-recyclable waste.” Instead, the commission has raised the limit on non-recyclable waste present in each incoming load received by the facility to 10%, and added a limit of 5% on the average amount of non-recyclable waste present in all loads processed by a facility in the last six-month period. A procedure for demonstrating alternative compliance with the definition of “Incidental amount(s) of non-recyclable waste” has been added to the definition since proposal. To ensure that alternative compliance be available to the appropriate sectors of the regulated community, the definition has been moved to §328.2.

NSWMA commented that the proposed new definition of “Incidental amounts of non-recyclable waste” should also include a definition of “incidental amounts of putrescible waste” as that was also a criterion proposed in §330.4. An inspector needs to be on notice of how much is more than incidental amounts of putrescible waste. A recycling facility should be allowed to accept up to 5% non-recyclable waste;

however, only a de minimus amount of putrescible waste may be included in that non-recyclable percentage. Exceeding these limits should trigger a requirement to obtain a permit or registration as a Type V municipal solid waste facility. An individual commented that the definition of “Incidental amount(s) of non-recyclable waste” should be retained in the proposed rule. The 5% limit on waste intermixed with recyclable material is good. This establishes a clear distinction between material that is regulated as a recyclable material and material that is regulated as a waste material. The same individual commented that the definition of “Source-separated recyclable material” was a good definition and should be retained in the proposed rule. TWS commented that there should be a definition of “incidental amounts of putrescible waste” in §330.2. TWS proposed that the definition state that “incidental amount(s) of nonputrescible waste” are those amounts that are truly de minimus and total less than five pounds per load. TWS believed that the “de minimus” level was necessary because facilities that process putrescible waste must be subject to stricter rules and oversight than facilities processing non-putrescible waste, regardless of whether the material was recyclable or not. Only those facilities that process truly minimal amounts of non-recyclable materials, and screen out and reject putrescible waste, should be exempt from the commission oversight, public input, and the continuing environmental obligations that registration and permitting require. NSWMA commented that it supports the 5% limitation on non-recyclable material volume of each incoming load as a reasonable threshold for non-recyclable waste and the definition of “Incidental amounts of non-recyclable waste” should include a requirement that the recycling facility maintain written records to prove the recycling facility is complying with reasonable efforts requirements. NSWMA also commented that the definition of “Incidental amounts of non-recyclable waste” should require the recycling facility to maintain written proof of how much material was received and how much was

disposed of off-site or on-site so the commission inspector can readily determine if a facility is in compliance with the 5% limitation. NSWMA commented that this requirement was more appropriate for inclusion in §330.4. NSWMA commented that the definition of “Incidental amounts of non-recyclable waste” contained a requirement that non-recyclable material must be taken to an authorized solid waste disposal facility within one week. NSWMA supports this requirement and suggests requiring the recycling facility operator to maintain written proof this is being accomplished. NSWMA commented that this restriction was probably more appropriate for inclusion in §330.4. NSWMA commented that the definition of “incidental amounts of non-recyclable waste” includes several exceptions that should be eliminated or narrowed because it is so broad that everything could qualify as an exemption. The first exemption that should be deleted is in proposed §330.2(59)(A) that exempts “other manufactured items for which dismantling and separation of recyclable from non-recyclable components by the generator are impractical.” A process could be intentionally designed for any man-made object to make it impractical for the generator to separate out the non-recyclable materials. The second exemption should be narrowed in proposed §330.2(59)(B) for “damage to source-separated recyclable material during collection, unloading, and sorting.” This standard would be too simple to satisfy. A process could be set up to purposely destroy material that could be recycled, but it is more economical to dispose of the material. This exemption is important to keep, but needed to be narrowed to exempt only broken glass from the definition of incidental amounts of non-recyclable material. NSWMA also commented that the third exception which should be eliminated is in proposed §330.2(59)(C) for tramp materials. There is no explicit definition of tramp materials, but by the examples cited, it appears that any non-recyclable material that accompanies recycled material was excluded from the definition of “incidental amounts of non-recyclable waste.” NSWMA believed this

was the type of material that should be considered for the 5% limitation when evaluating whether a facility should be a Type V municipal solid waste facility. TWS commented that the addition of tramp materials within the definition of “Incidental amounts of non-recyclable waste” in §330.2(59)(C) should be deleted. The definition of “Tramp materials” was overly broad and seriously weakens the 5% non-recyclable waste requirement for incidental amounts of non-recyclable waste. While a strong argument can be made for retaining the exception for the non-recyclable components of white goods, whole computers, whole automobiles, and similar items which are typically shredded to facilitate the separation of materials and the exception for source-separated recyclable material which has been damaged during collection, sorting, or processing (i.e., breakage to recyclable glass), no similar argument can be applied to tramp materials. Therefore, tramp materials as listed in subparagraph (C) should be counted as “non-recyclable material” in calculating the amount of non-recyclable material that accompanies recyclable material despite reasonable efforts to maintain source-separation. The amount of tramp materials should be counted against the 5% maximum allowable amount of non-recyclable materials. For example, nails in recyclable lumber would be in the 5% non-recyclable portion and could be separated magnetically when the wood is chipped or processed. Sheet rock, gypsum, and wallboard would have to be separated prior to the recyclable lumber being processed to avoid contamination. Failure to separate the materials into the recyclable components should preclude the recycler from claiming that trash is recyclable material.

The commission disagrees with suggestions to place more restrictive limitations on the definition of “Incidental amount(s) of non-recyclable waste” in proposed §330.2(59). In light of the comments received from several legitimate municipal and private sector recyclers that contribute

significantly to recycling in Texas, the commission finds that, in many cases, such restrictions could deter the practice of recycling and work in opposition to the state's policy preference for recycling over landfilling, established in THSC, §361.022, relating to Public Policy Concerning Municipal Solid Waste and Sludge. Further, the commission finds that such restrictions are not necessary to implement the prescriptions nor the intention of the enabling legislation. The commission recognizes the inability of a recycling facility to exercise total control over the amount of non-recyclable waste in each incoming load, despite reasonable efforts to maintain source-separation, and the likelihood of non-recyclable waste in excess of 5% being present in any given load. The commission also recognizes that the potential public health and safety risks arising from non-hazardous, non-putrescible recyclable materials, when handled in accordance with proposed §328.3, General Requirements, for recycling facilities, can be minimized.

For these reasons, the proposed definition has been amended to establish an upper limit of 10% on the total amount of non-recyclable waste that may constitute "incidental non-recyclable waste" in any single incoming load, and added a limit of 5% on the average amount of non-recyclable waste present in all materials received by a facility in the last six-month period. However, this less restrictive definition is not intended to weaken or obstruct the intent of the enabling statute and the second purpose of the rule, which is to draw a clearer distinction between legitimate recycling facilities and solid waste facilities that currently operate unregulated under the guise of recycling facilities. The commission recognizes that the primary distinction between legitimate and non-legitimate recycling operations is the unrestricted accumulation of unprocessed materials on the part of the latter. To address this distinction, to hold recyclers accountable for the responsible

disposition of the materials they handle, and to minimize the public health and safety hazards associated with the accumulation of materials, the commission adopts significant restrictions on the storage of unprocessed recyclable materials under §328.4, and reporting and recordkeeping requirements to substantiate them in §328.5. In addition, §328.3 establishes general requirements for recycling facilities that apply the performance-based standards of several existing statutes to their operations. A procedure for demonstrating alternative compliance with the definition of “Incidental amount(s) of non-recyclable waste” has been added to the definition since proposal. To ensure that alternative compliance be available to the appropriate sectors of the regulated community, the definition has been moved to §328.2.

SUBCHAPTER A: GENERAL INFORMATION

§330.2

STATUTORY AUTHORITY

The amendment is adopted under THSC, Texas Solid Waste Disposal Act, §361.119, which provides the commission with the authority to adopt rules to ensure that a solid waste processing facility is regulated as a solid waste facility under the Texas Solid Waste Disposal Act and is not allowed to operate unregulated as a recycling facility; §§361.011, 361.017 and 361.024, which provide the commission with the authority to adopt rules necessary to carry out its powers and duties under Texas Solid Waste Disposal Act; §361.022, which establishes state public policy concerning municipal solid waste to include recycling of waste as a preferred method and requires the commission to consider that policy when adopting rules; and §361.428, which provides the commission with the authority to adopt rules establishing standards and guidelines for composting facilities. The adopted amendment is also authorized by TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under TWC.

§330.2. Definitions.

Unless otherwise noted, all terms contained in this section are defined by their plain meaning. This section contains definitions for terms that appear throughout this chapter. Additional definitions may appear in the specific section to which they apply. As used in this chapter, words in the masculine gender also include the feminine and neuter genders, words in the feminine gender also include the

masculine and neuter genders; words in the singular include the plural and words in the plural include the singular. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **100-year flood** - A flood that has a 1.0% or greater chance of recurring in any given year or a flood of a magnitude equalled or exceeded once in 100 years on the average over a significantly long period.

(2) **Acid** - A substance containing hydrogen that will release hydrogen (hydronium) ions when dissolved in water. Acids will have a pH of less than 7.0 and usually have a sour taste and will cause blue litmus dye to turn red.

(3) **Active life** - The period of operation beginning with the initial receipt of solid waste and ending at certification/ completion of closure activities in accordance with §§330.250 - 330.253 of this title (relating to Closure and Post-Closure).

(4) **Active portion** - That part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with §§330.250 - 330.253 of this title (relating to Closure and Post-Closure).

(5) **Airport** - A public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(6) **Aquifer** - A geological formation, group of formations, or portion of a formation capable of yielding significant quantities of groundwater to wells or springs.

(7) **Areas susceptible to mass movements** - Areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the MSWLF unit, because of natural or man-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock fall.

(8) **Asbestos-containing materials** - Include the following.

(A) Category I nonfriable asbestos-containing material (ACM) means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1.0% asbestos as determined using the method specified in Appendix A, Subpart F, 40 CFR, Part 763, §1, Polarized Light Microscopy.

(B) Category II nonfriable ACM means any material, excluding Category I nonfriable ACM, containing more than 1.0% asbestos as determined using the methods specified in Appendix A, Subpart F, 40 CFR, Part 763, §1, Polarized Light Microscopy, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

(C) Friable ACM means any material containing more than 1.0% asbestos that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

(D) Nonfriable ACM means any material containing more than 1.0% asbestos that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

(9) **ASTM** - The American Society of Testing and Materials.

(10) **Battery** - An electrochemical device that generates electric current by converting chemical energy. Its essential components are positive and negative electrodes made of more or less electrically conductive materials, a separate medium, and an electrolyte. There are four major types:

(A) primary batteries (dry cells);

(B) storage or secondary batteries;

(C) nuclear and solar cells or energy converters; and

(D) fuel cells.

(11) **Battery acid (also known as electrolyte acid)** - A solution of not more than 47% sulfuric acid in water suitable for use in storage batteries, which is water white, odorless, and practically free from iron.

(12) **Battery retailer** - A person or business location that sells lead-acid batteries to the general public, without restrictions to limit purchases to institutional or industrial clients only.

(13) **Battery wholesaler** - A person or business location that sells lead-acid batteries directly to battery retailers, to government entities by contract sale, or to large-volume users, either directly or by contract sale.

(14) **Bird hazard** - An increase in the likelihood of bird/aircraft collisions that may cause damage to an aircraft or injury to its occupants.

(15) **Brush** - Cuttings or trimmings from trees, shrubs, or lawns and similar materials.

(16) **Buffer zone** - A zone free of municipal solid waste processing and disposal activities adjacent to the site boundary.

(17) **CFR** - Code of Federal Regulations.

(18) **Citizens' collection station** - A facility established for the convenience and exclusive use of residents (not commercial or industrial users or collection vehicles). The facility may consist of one or more storage containers, bins, or trailers.

(19) **Class I industrial solid waste** - See industrial solid waste.

(20) **Collection** - The act of removing solid waste (or materials that have been separated for the purpose of recycling) for transport elsewhere.

(21) **Collection system** - The total process of collecting and transporting solid waste. It includes storage containers; collection crews, vehicles, equipment and management; and operating procedures. Systems are classified as municipal, contractor, or private.

(22) **Commercial solid waste** - All types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

(23) **Commission** - The Texas Water Commission and its successors.

(24) **Compacted waste** - Waste that has been reduced in volume by a collection vehicle or other means including, but not limited to, dewatering, composting, incineration, and similar

processes, with the exception of waste that has been reduced in volume by a small, in-house compactor device owned and/or operated by the generator of the waste.

(25) **Composite liner** - A liner system consisting of two components: the upper component must consist of a minimum 30-mil flexible membrane liner (FML) or minimum 60-mil high-density polyethylene (HDPE), and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. The FML component must be installed in direct and uniform contact with the compacted soil component.

(26) **Compost** - The stabilized product of the decomposition process that is used or sold for use as a soil amendment, artificial top soil, growing medium amendment, or other similar uses.

(27) **Composting** - The controlled biological decomposition of organic materials through microbial activity.

(28) **Conditionally exempt small-quantity generator** - A person who generates no more than 220 pounds of hazardous waste in a calendar month.

(29) **Construction-demolition waste** - Waste resulting from construction or demolition projects; includes all materials that are directly or indirectly the by-products of construction work or that result from demolition of buildings and other structures, including, but not limited to, paper, cartons, gypsum board, wood, excelsior, rubber, and plastics.

(30) **Contaminate** - The man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of ground or surface water.

(31) **Controlled burning** - The combustion of solid waste with control of combustion air to maintain adequate temperature for efficient combustion; containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and control of the emission of the combustion products, i.e., incineration in an incinerator.

(32) **Discard** - To abandon a material and not use, re-use, reclaim, or recycle it. A material is abandoned by being disposed of; burned or incinerated (except where the material is being burned as a fuel for the purpose of recovering usable energy); or physically, chemically, or biologically treated (other than burned or incinerated) in lieu of or prior to being disposed.

(33) **Discharge** - Includes deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release, or to allow, permit, or suffer any of these acts or omissions.

(34) **Discharge of dredged material** - Any addition of dredged material into the waters of the United States. The term includes, without limitation, the addition of dredged material to a specified disposal site located in waters of the United States and the runoff or overflow from a contained land or water disposal area.

(35) **Discharge of fill material** - The addition of fill material into waters of the United States. The term generally includes placement of fill necessary to the construction of any structure in waters of the United States: the building of any structure or improvement requiring rock, sand, dirt, or other inert material for its construction; the building of dams, dikes, levees, and riprap.

(36) **Discharge of pollutant** - Any addition of any pollutant to navigable waters from any point source or any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source.

(37) **Displacement** - The measured or estimated distance between two formerly adjacent points situated on opposite walls of a fault (synonymous with net slip).

(38) **Disposal** - The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

(39) **Dredged material** - Material that is excavated or dredged from waters of the United States.

(40) **Drinking-water intake** - The point at which water is withdrawn from any water well, spring, or surface water body for use as drinking water for humans, including standby public water supplies.

(41) **Elements of nature** - Rainfall, snow, sleet, hail, wind, sunlight, or other natural phenomenon.

(42) **Endangered or threatened species** - Any species listed as such pursuant to the Federal Endangered Species Act, §4, 16 United States Code (USC), §1536, as amended or pursuant to the Texas Endangered Species Act.

(43) **EPA** - United States Environmental Protection Agency.

(44) **Essentially insoluble** - Any material that, if representatively sampled and placed in static or dynamic contact with deionized water at ambient temperature for seven days, will not leach any quantity of any constituent of the material into the water in excess of the maximum contaminant levels in 40 CFR 141, Subparts B and G, and 40 CFR 143 for total dissolved solids.

(45) **Executive director** - The executive director of the Texas Water Commission and successors, or a person authorized to act on her behalf.

(46) **Existing MSWLF unit** - Any municipal solid waste landfill unit that received solid waste as of October 9, 1993. Waste placement in existing units must be consistent with past operating practices or modified practices to ensure good management.

(47) **Experimental project** - Any new proposed method of managing municipal solid waste, including resource and energy recovery projects, that appears to have sufficient merit to warrant commission approval.

(48) **Facility** - All contiguous land and structures, other appurtenances, and improvements on the land used for the storage, processing, or disposal of solid waste.

(49) **Fault** - A fracture or a zone of fractures in any material along which strata, rocks, or soils on one side have been displaced with respect to those on the other side.

(50) **Fill material** - Any material used for the primary purpose of filling an excavation.

(51) **Floodplain** - The lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood.

(52) **Garbage** - Solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products.

(53) **Gas condensate** - The liquid generated as a result of any gas recovery process at a municipal solid waste facility.

(54) **Generator** - Any person, by site or location, whose act or process produces a solid waste or first causes it to become regulated.

(55) **Groundwater** - Water below the land surface in a zone of saturation.

(56) **Hazardous waste** - Any solid waste identified or listed as a hazardous waste by the administrator of United States Environmental Protection Agency (EPA) pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 USC, §6901 *et seq.*, as amended.

(57) **Holocene** - The most recent epoch of the Quaternary Period, extending from the end of the Pleistocene Epoch to the present.

(58) **Household waste** - Any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels, and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas); does not include yard waste or brush that is completely free of any household wastes.

(59) **Industrial hazardous waste** - Hazardous waste determined to be of industrial origin.

(60) **Industrial solid waste** - Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations, classified as follows.

(A) Class I industrial solid waste or Class I waste is any industrial solid waste designated as Class I by the executive director as any industrial solid waste or mixture of industrial solid wastes that because of its concentration or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, and may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or otherwise managed, including hazardous industrial waste, as defined in §335.1 of this title (relating to Definitions) and §335.505 of this title (relating to Class I Waste Determination).

(B) Class II industrial solid waste is any individual solid waste or combination of industrial solid wastes that cannot be described as Class I or Class III, as defined in §335.506 of this title (relating to Class II Waste Determination).

(C) Class III industrial solid waste is any inert and essentially insoluble industrial solid waste, including materials such as rock, brick, glass, dirt, and certain plastics and

rubber, etc., that are not readily decomposable as defined in §335.507 of this title (relating to Class III Waste Determination).

(61) **Inert material** - A naturally occurring nonputrescible material that is essentially insoluble such as soil, dirt, clay, sand, gravel, and rock.

(62) **In situ** - In natural or original position.

(63) **Karst terrain** - An area where karst topography, with its characteristic surface and/or subterranean features, is developed principally as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terrains include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

(64) **Lateral expansion** - A horizontal expansion of the waste boundaries of an existing MSWLF unit.

(65) **Land application of solid waste** - The disposal or use of solid waste (including, but not limited to, sludge or septic tank pumpings or mixture of shredded waste and sludge) in which the solid waste is applied within three feet of the surface of the land.

(66) **Leachate** - A liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

(67) **Lead** - The metal element, atomic number 82, atomic weight 207.2, with the chemical symbol Pb.

(68) **Lead acid battery** - A secondary or storage battery that uses lead as the electrode and dilute sulfuric acid as the electrolyte and is used to generate electrical current.

(69) **License** -

(A) A document issued by an approved county authorizing and governing the operation and maintenance of a municipal solid waste facility used to process, treat, store, or dispose of municipal solid waste, other than hazardous waste, in an area not in the territorial limits or extraterritorial jurisdiction of a municipality.

(B) An occupational license as defined in Chapter 30 of this title (relating to Occupational Licenses and Registrations).

(70) **Liquid waste** - Any waste material that is determined to contain "free liquids" as defined by EPA Method 9095 (Paint Filter Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication Number SW-846).

(71) **Litter** - Rubbish and putrescible waste.

(72) **Lower explosive limit** - The lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25 degrees Celsius and atmospheric pressure.

(73) **Man-made inert material** - Those non-putrescible, essentially insoluble materials fabricated by man that are not included under the definition of rubbish.

(74) **Medical waste** - Waste generated by health-care-related facilities and associated with health-care activities, not including garbage or rubbish generated from offices, kitchens, or other non-health-care activities. The term includes special waste from health care-related facilities which is comprised of animal waste, bulk blood and blood products, microbiological waste, pathological waste, and sharps as those terms are defined in 25 TAC §1.132 (Definition, Treatment, and Disposition of Special Waste from Health-Care Related Facilities). The term does not include medical waste produced on farmland and ranchland as defined in Agriculture Code, §252.001(6) (Definitions - Farmland or ranchland), nor does the term include artificial, nonhuman materials removed from a patient and requested by the patient, including but not limited to orthopedic devices and breast implants.

(75) **Monofill** - A landfill or landfill trench into which only one type of waste is placed.

(76) **MSWLF** - Municipal solid waste landfill facility.

(77) **Municipal hazardous waste** - Any municipal solid waste or mixture of municipal solid wastes that has been identified or listed as a hazardous waste by the administrator, United States Environmental Protection Agency.

(78) **Municipal solid waste (MSW)** - Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste.

(79) **Municipal solid waste facility (MSW facility)** - All contiguous land, structures, other appurtenances, and improvements on the land used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and may consist of several processing, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(80) **Municipal solid waste landfill unit (MSWLF unit)** - A discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under §257.2 of 40 CFR, Part 257. An MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small-quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. An MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion.

(81) **Municipal solid waste site (MSW site)** - A plot of ground designated or used for the processing, storage, or disposal of solid waste.

(82) **Navigable waters** - The waters of the United States, including the territorial seas.

(83) **New MSWLF unit** - Any municipal solid waste landfill unit that has not received waste prior to October 9, 1993.

(84) **Nonpoint source** - Any origin from which pollutants emanate in an unconfined and unchanneled manner, including, but not limited to, surface runoff and leachate seeps.

(85) **Non-RACM** - Non-regulated asbestos-containing material as defined in 40 CFR 61. This is asbestos material in a form such that potential health risks resulting from exposure to it are minimal.

(86) **Nuisance** - Municipal solid waste that is stored, processed, or disposed of in a manner that causes the pollution of the surrounding land, the contamination of groundwater or surface water, the breeding of insects or rodents, or the creation of odors adverse to human health, safety, or welfare.

(87) **Open burning** - The combustion of solid waste without:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of the emission of the combustion products.

(88) **Operate** - To conduct, work, run, manage, or control.

(89) **Operating record** - All plans, submittals, and correspondence for an MSWLF facility required under this chapter; required to be maintained at the facility or at a nearby site acceptable to the executive director.

(90) **Operation** - A municipal solid waste site or facility is considered to be in operation from the date that solid waste is first received or deposited at the municipal solid waste site or facility until the date that the site or facility is properly closed in accordance with this chapter.

(91) **Operator** - The person(s) responsible for operating the facility or part of a facility.

(92) **Opposed case** - A case when one or more parties appear, or make their appearance, in opposition to an application and are designated as opponent parties by the hearing examiner either at or before the public hearing on the application.

(93) **Other regulated medical waste** - Medical waste that is not included within special waste from health care-related facilities but that is subject to special handling requirements within the generating facility by other state or federal agencies, excluding medical waste subject to 25 TAC Chapter 289 (concerning Radiation Control).

(94) **Owner** - The person who owns a facility or part of a facility.

(95) **PCB** - Polychlorinated biphenyl molecule.

(96) **PCB waste(s)** - Those PCBs and PCB items that are subject to the disposal requirements of 40 CFR 761. Substances that are regulated by 40 CFR 761 include, but are not limited to: PCB articles, PCB article containers, PCB containers, PCB-contaminated electrical equipment, PCB equipment, PCB transformers, recycled PCBs, capacitors, microwave ovens, electronic equipment, and light ballasts and fixtures.

(97) **Permit** - A written permit issued by the commission that, by its conditions, may authorize the owner or operator to construct, install, modify, or operate a specified municipal solid waste storage, processing, or disposal facility in accordance with specific limitations.

(98) **Person** - An individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(99) **Point of compliance** - A vertical surface located no more than 500 feet from the hydraulically downgradient limit of the waste management unit boundary, extending down through the uppermost aquifer underlying the regulated units, and located on land owned by the owner of the permitted facility.

(100) **Point source** - Any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, or discrete fissure from which pollutants are or may be discharged.

(101) **Pollutant** - Contaminated dredged spoil, solid waste, contaminated incinerator residue, sewage, sewage sludge, munitions, chemical wastes, or biological materials discharged into water.

(102) **Pollution** - The man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of an aquatic ecosystem.

(103) **Poor foundation conditions** - Areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of an MSWLF unit.

(104) **Population equivalent** - The hypothetical population that would generate an amount of solid waste equivalent to that actually being managed based on a generation rate of five pounds per capita per day and applied to situations involving solid waste not necessarily generated by individuals. It is assumed, for the purpose of these sections, that the average volume per ton of waste entering a municipal solid waste disposal facility is three cubic yards. For the purposes of these sections, the following population equivalents shall apply:

(A) 8,000 persons - 20 tons per day or 60 cubic yards per day;

(B) 5,000 persons - 12 1/2 tons or 37 1/2 cubic yards per day;

(C) 1,500 persons - 3 3/4 tons or 11 1/4 cubic yards per day;

(D) 1,000 persons - 225 pounds of wastewater treatment plant sludge per day (dry-weight basis).

(105) **Post-consumer waste** - A material or product that has served its intended use and has been discarded after passing through the hands of a final user. For the purposes of this subchapter, the term does not include industrial or hazardous waste.

(106) **Premises** - A tract of land with the buildings thereon, or a building or part of a building with its grounds or other appurtenances.

(107) **Processing** - Activities including, but not limited to, the extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of hazardous waste, designed to change the physical, chemical, or biological character or composition of any hazardous waste to neutralize such waste, or to recover energy or material from the waste, or to render such waste nonhazardous or less hazardous; safer to transport, store, dispose of, or make it amenable for recovery, amenable for storage, or reduced in volume. Unless the executive director determines that regulation of such activity under these rules is necessary to protect human health or the environment, the definition of "processing" does not include activities relating to those materials exempted by the administrator of the Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 USC, §6901 *et seq.*, as amended.

(108) **Public highway** - The entire width between property lines of any road, street, way, thoroughfare, bridge, public beach, or park in this state, not privately owned or controlled, if any part of the road, street, way, thoroughfare, bridge, public beach, or park is opened to the public for vehicular traffic, is used as a public recreational area, or is under the state's legislative jurisdiction through its police power.

(109) **Putrescible waste** - Organic wastes, such as garbage, wastewater treatment plant sludge, and grease trap waste, that is capable of being decomposed by microorganisms with sufficient rapidity as to cause odors or gases or is capable of providing food for or attracting birds, animals, and disease vectors.

(110) **Qualified groundwater scientist** - A scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university programs that enable the individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action.

(111) **RACM** - Regulated asbestos-containing material as defined in 40 CFR 61, as amended, includes: friable asbestos material, Category I nonfriable ACM that has become friable; Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading; or Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations.

(112) **Radioactive waste** - Waste that requires specific licensing under 25 TAC Chapter 401, concerning Radioactive Materials and Other Sources of Radiation, Health and Safety Code, and the rules adopted by the commission under that law.

(113) **RCRA** - Resource Conservation and Recovery Act.

(114) **Recyclable material** - A material that has been recovered or diverted from the nonhazardous waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of

which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Recyclable material is not solid waste. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

(115) **Recycling** - A process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials in the production of new products. Except for mixed municipal solid waste composting, that is, composting of the typical mixed solid waste stream generated by residential, commercial, and/or institutional sources, recycling includes the composting process if the compost material is put to beneficial use.

(116) **Refuse** - Same as rubbish.

(117) **Registration** - The act of filing information for specific solid waste management activities that do not require a permit, as determined by this chapter.

(118) **Regulated hazardous waste** - A solid waste that is a hazardous waste as defined in 40 CFR, Part 261.3, and that is not excluded from regulation as a hazardous waste under 40 CFR, Part 261.4(b), or that was not generated by a conditionally exempt small-quantity generator.

(119) **Relevant point of compliance** - See point of compliance.

(120) **Resource recovery** - The recovery of material or energy from solid waste.

(121) **Resource recovery site** - A solid waste processing site at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(122) **Rubbish** - Nonputrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, or similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

(123) **Run-off** - Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(124) **Run-on** - Any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(125) **Salvaging** - The controlled removal of waste materials for utilization, recycling, or sale.

(126) **Saturated zone** - That part of the earth's crust in which all voids are filled with water.

(127) **Scavenging** - The uncontrolled and unauthorized removal of materials at any point in the solid waste management system.

(128) **Scrap tire** - Any tire that can no longer be used for its original intended purpose.

(129) **Seasonal high water table** - The highest measured or calculated water level in an aquifer during investigations for a permit application and/or any groundwater characterization studies at a site.

(130) **Septage** - The liquid and solid material pumped from a septic tank, cesspool, or similar sewage treatment system.

(131) **Shall** - The stated action is mandatory.

(132) **Should** - The stated action is recommended as a guide in completing the overall requirement.

(133) **Site** - Same as facility.

(134) **Site development plan** - A document, prepared by the design engineer, that provides a detailed design with supporting calculations and data for the development and operation of a solid waste site.

(135) **Site operating plan** - A document, prepared by the design engineer in collaboration with the site operator, that provides guidance to site management and operating personnel in sufficient detail to enable them to conduct day-to-day operations throughout the life of the site in a manner consistent with the engineer's design and the commission's regulations.

(136) **Site operator** - The holder of, or the applicant for, a permit (or license) for a municipal solid waste site.

(137) **Sludge** - Any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water-supply treatment plant, or air pollution control facility, exclusive of the treated effluent from a wastewater treatment plant.

(138) **Small MSWLF** - A municipal solid waste landfill at which less than 20 tons of municipal solid waste are disposed of daily based on an annual average.

(139) **Solid waste** - Garbage, rubbish, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal,

commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under the Water Code, Chapter 26;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under the Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by Resource Conservation and Recovery Act, as amended (42 USC, §6901 *et seq.*).

(140) **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.

(141) **Special waste** - Any solid waste or combination of solid wastes that because of its quantity, concentration, physical or chemical characteristics, or biological properties requires special handling and disposal to protect the human health or the environment. If improperly handled, transported, stored, processed, or disposed of or otherwise managed, it may pose a present or potential danger to the human health or the environment. Special wastes are:

(A) hazardous waste from conditionally exempt small-quantity generators that may be exempt from full controls under §§335.401 - 335.412 of this title (relating to Household Materials Which Could Be Classified as Hazardous Waste);

(B) Class I industrial nonhazardous waste not routinely collected with municipal solid waste;

(C) special waste from health-care-related facilities (refers to certain items of medical waste);

(D) municipal wastewater treatment plant sludges, other types of domestic sewage treatment plant sludges, and water-supply treatment plant sludges;

(E) septic tank pumpings;

(F) grease and grit trap wastes;

(G) wastes from commercial or industrial wastewater treatment plants; air pollution control facilities; and tanks, drums, or containers used for shipping or storing any material that has been listed as a hazardous constituent in 40 CFR, Part 261, Appendix VIII but has not been listed as a commercial chemical product in 40 CFR §261.33(e) or (f);

(H) slaughterhouse wastes;

(I) dead animals;

(J) drugs, contaminated foods, or contaminated beverages, other than those contained in normal household waste;

(K) pesticide (insecticide, herbicide, fungicide, or rodenticide) containers;

(L) discarded materials containing asbestos;

(M) incinerator ash;

(N) soil contaminated by petroleum products, crude oils, or chemicals;

(O) used oil;

(P) light ballasts and/or small capacitors containing polychlorinated biphenyl
(PCB) compounds;

(Q) waste from oil, gas, and geothermal activities subject to regulation by the
Railroad Commission of Texas when those wastes are to be processed, treated, or disposed of at a solid
waste management facility permitted under this chapter;

(R) waste generated outside the boundaries of Texas that contains:

(i) any industrial waste;

(ii) any waste associated with oil, gas, and geothermal exploration,
production, or development activities; or

(iii) any item listed as a special waste in this paragraph;

(S) any waste stream other than household or commercial garbage, refuse, or
rubbish;

(T) lead acid storage batteries; and

(U) used-oil filters from internal combustion engines.

(142) **Special waste from health care-related facilities** - Includes animal waste, bulk human blood, blood products, body fluids, microbiological waste, pathological waste, and sharps as defined in 25 TAC §1.132 (concerning Definitions).

(143) **Stabilized sludges** - Those sludges processed to significantly reduce pathogens, by processes specified in 40 CFR, Part 257, Appendix II.

(144) **Storage** - The holding of solid waste for a temporary period, at the end of which the solid waste is processed, disposed of, or stored elsewhere. Facilities established as a neighborhood collection point for only nonputrescible source-separated recyclable material, as a collection point for consolidation of parking lot or street sweepings or wastes collected and received in sealed plastic bags from such activities as periodic citywide cleanup campaigns and cleanup of rights-of-way or roadside parks, or for accumulation of used or scrap tires prior to transportation to a processing or disposal site are considered examples of storage facilities. Storage includes operation of pre-collection and post-collection as follows:

(A) pre-collection - that storage by the generator, normally on his premises, prior to initial collection;

(B) post-collection - that storage by a transporter or processor, at a processing site, while the waste is awaiting processing or transfer to another storage, disposal, or recovery facility.

(145) **Storage battery** - A secondary battery, so called because the conversion from chemical to electrical energy is reversible and the battery is thus rechargeable. Secondary or storage batteries contain an electrode made of sponge lead and lead dioxide, nickel-iron, nickel-cadmium, silver-zinc, or silver-cadmium. The electrolyte used is sulfuric acid. Other types of storage batteries contain lithium, sodium-liquid sulfur, or chlorine-zinc using titanium electrodes.

(146) **Store** - To keep, hold, accumulate, or aggregate.

(147) **Structural components** - Liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the MSWLF that is necessary for protection of human health and the environment.

(148) **Surface impoundment** - A facility or part of a facility that is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials (although it may be lined with human-made materials) that is designed to hold an accumulation of liquids; examples include holding, storage, settling, and aeration pits, ponds, or lagoons.

(149) **Surface water** - Surface water as included in water in the state.

(150) **SWDA** - Texas Solid Waste Disposal Act.

(151) **TACB** - Texas Air Control Board and its successors.

(152) **Texas Civil Statutes** - Vernon's Texas Revised Civil Statutes Annotated.

(153) **Transfer station** - A fixed facility used for transferring solid waste from collection vehicles to long-haul vehicles (one transportation unit to another transportation unit). It is not a storage facility such as one where individual residents can dispose of their wastes in bulk storage containers that are serviced by collection vehicles.

(154) **Transportation unit** - A truck, trailer, open-top box, enclosed container, rail car, piggy-back trailer, ship, barge, or other transportation vehicle used to contain solid waste being transported from one geographical area to another.

(155) **Transporter** - A person who collects and transports solid waste; does not include a person transporting his or her household waste.

(156) **Trash** - Same as Rubbish.

(157) **Treatment** - Same as Processing.

(158) **Triple rinse** - To rinse a container three times using a volume of solvent capable of removing the contents equal to 10% of the volume of the container or liner for each rinse.

(159) **TWC** - Texas Water Commission.

(160) **Uncompacted waste** - 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 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.

(161) **Unified soil classification system** - The standardized system devised by the United States Army Corps of Engineers for classifying soil types.

(162) **Unconfined water** - Water that is not controlled or impeded in its direction or velocity.

(163) **Unit** - Municipal solid waste landfill unit.

(164) **Unstable area** - A location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

(165) **Uppermost aquifer** - The geologic formation nearest the natural ground surface that is an aquifer; includes lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(166) **Vector** - An agent, such as an insect, snake, rodent, bird, or animal capable of mechanically or biologically transferring a pathogen from one organism to another.

(167) **Washout** - The carrying away of solid waste by waters.

(168) **Waste management unit boundary** - A vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

(169) **Waste-separation/intermediate-processing center** - A facility, sometimes referred to as a materials recovery facility, to which recyclable materials arrive as source-separated materials, or where recyclable materials are separated from the municipal waste stream and processed for transport off-site for reuse, recycling, or other beneficial use.

(170) **Waste-separation/recycling facility** - A facility, sometimes referred to as a material recovery facility, in which recyclable materials are removed from the waste stream for transport off-site for reuse, recycling, or other beneficial use.

(171) **Water in the state** - Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(172) **Water table** - The upper surface of the zone of saturation at which water pressure is equal to atmospheric pressure, except where that surface is formed by a confining unit.

(173) **Waters of the United States** - All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide, with their tributaries and adjacent wetlands, interstate waters and their tributaries, including interstate wetlands; all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters that are or could be used by interstate or foreign travelers for recreational or other purposes; from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; that are used or could be used for industrial purposes by industries in interstate commerce; and all impoundments of waters otherwise considered as navigable waters; including tributaries of and wetlands adjacent to waters identified herein.

(174) **Wetlands** - As defined in Chapter 307 of this title (relating to Texas Surface Water Quality Standards) and areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include playa lakes, swamps, marshes, bogs, and similar areas.

(175) **Yard waste** - Leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscaping maintenance and land-clearing operations. The term does not include stumps, roots, or shrubs with intact root balls.