

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §330.2, Definitions.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The purpose of the proposed amendment is to implement certain requirements of House Bill (HB) 2912, Article 9, §9.03, 77th Legislature, 2001. House Bill 2912 became effective on September 1, 2001. House Bill 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; Chapter 332, Composting are published in the Proposed Rules section of this issue of the *Texas Register*; and to 30 TAC Chapter 330, §330.4, Permits Required (Rule Log No. 2001-082-328-WS) that was proposed in a separate rulemaking at the March 13, 2002 commission agenda as published in the March 29, 2002 issue of the *Texas Register*.

SECTION DISCUSSION

Section 330.2, Definitions, is proposed to be amended to add the definitions for “Source-separated recyclable material” and “Incidental amount(s) of non-recyclable waste.” Rule Log. No. 2001-082-328-WS proposes to amend §330.4 to include the term “Source-separated recyclable material,” for which there is no definition in this chapter. This definition is also to be used in applying the requirement in the proposed new §330.4(f). Facilities that process recyclable material that contains more than incidental amounts of putrescible or non-recyclable waste must obtain a permit or registration. In this context, “incidental amounts of putrescible or non-recyclable waste” would be interpreted as materials that accompany recyclables despite reasonable efforts to maintain source-

separation. Examples would include “tramp materials” such as glass from recyclable metal windows, nails and roofing felt attached to recyclable shingles, and nails and sheetrock attached to recyclable lumber generated through the demolition of buildings, provided that in each instance, dual collection and transportation systems were in place for recyclable and non-recyclable materials, generators were informed of the source-separation requirements, and the recycling facility has instituted quality control measures such as inspection of incoming loads and rejection of mixed wastes. The remaining definitions are proposed to be renumbered with the addition of the proposed new definition. Language is proposed to be added to the definition of “Storage” to be consistent with the proposed new language in §330.4.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for units of state and local government due to implementation of the proposed rule. Units of local government would be exempt from the recordkeeping, reporting, and storage limitation requirements; however, units of state government would have to comply with these requirements.

This proposed rule is intended to implement certain provisions of HB 2912 (an act relating to the continuation and functions of the Texas Natural Resource Conservation Commission; providing penalties), 77th Texas Legislature, 2001. This bill requires the commission to ensure that solid waste processing facilities are regulated as solid waste facilities and are not allowed to operate unregulated as recycling facilities. In order to comply with this requirement, the commission proposes to clarify the

definition of a recycling facility, implement recordkeeping and reporting requirements for recycling facilities claiming exemptions from commission registration and permits, and implement the requirement that facilities claiming to be recycling operations process 75% of their on-site materials in a calendar year.

The proposed rule will affect all recycling facilities statewide that are not part of a registered or permitted municipal solid waste site, except those excluded under the legislation. Excluded facilities are those owned or operated by local governments and those whose primary function is to process materials that have a resale value greater than the cost of processing the materials. The legislation also excludes facilities owned, operated, or affiliated with municipal solid waste permit holders from the recordkeeping and reporting requirements of the new rules. Affected facilities include processors, handlers, and collectors of recyclable material as well as owners and operators of certain compost facilities. The commission estimates that a minimum of approximately 1,000 recycling and 134 compost facilities could potentially be affected, but expects that many of these facilities would qualify for the exclusions provided in the legislation. The commission estimates that the number of recycling facilities owned or operated by units of state government will be very low. Currently, the commission has no records of any units of state government operating recycling facilities that would be affected by the proposed rule.

Recycling facilities that serve as collection and processing points for nonputrescible recyclable materials are currently exempt from municipal solid waste registration and permitting, and are currently not required to maintain records, provide reports to the commission, or process a certain amount of

received materials within a year. The proposed rule would require recycling facilities claiming exemption from municipal solid waste registration and permitting to submit an initial report to the executive director that lists the type(s) of materials to be accepted for recycling, any storage of materials prior to recycling, and how the materials will be recycled. Subsequent reports would have to be filed only if the facilities' operations change. Owners and operators of affected facilities would be required to maintain compliance records, and make the records available to the executive director and local government officials upon request. The commission does not anticipate that the recordkeeping and reporting requirements would cost affected owners and operators more than \$500 a year.

The new storage limitation provision would prohibit the accumulation of unprocessed materials at a recycling facility exempt from municipal solid waste registration or permitting and not excluded under the legislation. At a minimum, 75% of the material stored on January 1 of a calendar year would have to be processed during that year. This requirement is intended to prevent the unsafe storage of materials at recycling facilities exempt from municipal solid waste registration or permitting. Affected facilities that do not meet the processing requirements would either have to change their operations or obtain a permit or registration. The commission is not aware of any existing facilities owned and operated by units of state government that are not already meeting these requirements. Therefore, the commission does not anticipate significant fiscal implications for units of state government due to implementation of the storage limitation requirement.

PUBLIC BENEFITS AND COSTS

Mr. Davis also has determined that for each year of the first five years the proposed rule is in effect, since it would more clearly define what types of facilities are eligible for recycling facility exemptions, the public benefit anticipated from the proposed rule would be increased compliance with commission regulations and increased environmental protection.

This proposed rule is intended to implement certain provisions of HB 2912, which require 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 proposed rule will affect all recycling facilities statewide that are not already part of a permitted municipal solid waste site, except those excluded under the legislation. Excluded facilities are those owned or operated by local governments and those whose primary function is to process materials that have a resale value greater than the cost of processing the materials. The legislation also excludes facilities owned, operated, or affiliated with municipal solid waste permit holders from the recordkeeping and reporting requirements of the new rules. Affected facilities include processors, handlers, and collectors of recyclable material as well as owners and operators of certain compost facilities. The commission estimates that a minimum of approximately 1,000 recycling and 134 compost facilities could potentially be affected, but expects that many of these facilities would qualify for the exclusions provided in the legislation.

Recycling facilities that serve as collection and processing points for nonputrescible recyclable materials are currently exempt from municipal solid waste permitting and are not required to maintain records, provide reports to the commission, or process a certain amount of received materials within a year.

The proposed rule would require recycling facilities exempt from municipal solid waste registration and permitting to submit an initial report to the executive director that lists the type(s) of materials to be accepted for recycling, any storage of materials prior to recycling, and how the materials will be recycled. Subsequent reports would have to be filed only if the facilities' operations change. Owners and operators of affected facilities would be required to maintain compliance records, and make the records available to the executive director and local governments upon request. The commission does not anticipate the recordkeeping and reporting requirements would cost affected owners and operators more than \$500 a year.

The proposed rule would implement a new storage limitation provision prohibiting the accumulation of unprocessed materials at a recycling facility exempt from municipal solid waste permitting or registration and not excluded under the legislation. At a minimum, 75% of the material stored on January 1 of a calendar year would have to be processed during that year. This requirement is intended to prevent the unsafe storage of materials at recycling facilities exempt from municipal solid waste registration or permitting. Affected facilities that currently do not meet the processing requirements would either have to change their operations or obtain a permit or registration. Although the total number of affected facilities is unknown, the commission recognizes that there are facilities that would be impacted by these requirements and would be required to make changes to existing operating procedures or obtain a permit or registration. However, it is anticipated that the number of affected

facilities requiring major changes to operations would not be large because the majority of recycling facilities already meet or exceed the 75% processing requirement in order to maintain profits. The commission expects that the proposed processing provision would affect a relatively low number of facilities that claim to be recycling materials but are actually receiving and storing materials on-site for long periods of time.

The commission anticipates that the costs to comply with the proposed rule could be significant, depending on the facility and what compliance option it chooses to pursue. For those sites that have significant backlogs of materials that would have to be processed in order to meet the 75% processing requirement, the commission estimates it would cost between \$20 to \$200 per additional ton processed, depending on the type of site and material being processed. If a facility decides to obtain a municipal solid waste registration (the type of authorization that would apply to the great majority of facilities requiring an authorization) to operate as a transfer facility and store waste on-site, the costs of hiring a consultant, preparing the application, legal, and public notice costs would range between \$35,000 to \$250,000, depending on the type and location of the site, and the types of waste to be stored on-site. There could also be technical costs related to preparing the site to meet existing environmental standards. The site preparation costs would vary considerably, depending on the current condition of the site, its location, and what type of modifications would be required to meet the registration requirements. Costs associated with obtaining a permit for the disposal of municipal solid waste typically run upwards of \$1 million, in addition to site development expenses and cleanup of accumulated wastes.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There may be adverse fiscal implications, which could be significant, for small and micro-businesses due to implementation of the proposed rule. This proposed rule is intended to implement certain provisions of HB 2912, which require the commission to ensure that solid waste processing facilities are regulated as solid waste facilities and are not allowed to operate unregulated as recycling facilities.

The proposed rule will affect all recycling facilities statewide that are not already part of a registered or permitted municipal solid waste site, except those excluded under the legislation. Excluded facilities are those owned or operated by local governments and those whose primary function is to process materials that have a resale value greater than the cost of processing the materials. The legislation also excludes facilities owned, operated, or affiliated with municipal solid waste permit holders from the recordkeeping and reporting requirements of the new rules. Affected facilities include processors, handlers, and collectors of recyclable material as well as owners and operators of certain compost facilities. The commission estimates that a minimum of approximately 1,000 recycling and 134 compost facilities could potentially be affected, but expects that many of those facilities would qualify for the exclusions provided in the legislation; the commission recognizes that many of these are owned and operated by small and micro-businesses.

Recycling facilities exempt from municipal solid waste registration or permitting are currently not required to maintain records, provide reports to the commission, or process a certain amount of received materials within a year. The proposed rule would require new or existing sites claiming to be recycling facilities exempt from municipal solid waste registration or permitting to submit an initial

report to the executive director, prior to commencing or continuing operations, that lists the type(s) of materials to be accepted for recycling, any storage of materials prior to recycling, and how the materials will be recycled. Subsequent reports would have to be filed only if the facilities' operations change. Owners and operators of affected facilities would be required to maintain compliance records, and make the records available to the executive director and local governments upon request. The commission does not anticipate the recordkeeping and reporting requirements would cost affected owners and operators more than \$500 a year.

The proposed rule would implement a new storage limitation provision that would prohibit the accumulation of unprocessed materials at a recycling facility exempt from municipal solid waste registration or permitting and not excluded under this legislation. At a minimum, 75% of the material stored on January 1 of a calendar year would have to be processed during that year. This requirement is intended to prevent the unsafe storage of materials at recycling facilities exempt from municipal solid waste permitting. Affected facilities that currently do not meet the processing requirements would either have to change their operations or obtain a permit or registration. Although the total number of affected facilities is unknown, the commission recognizes that there are existing facilities that are small or micro-businesses that would be impacted by these requirements and would be required to make changes to existing operating procedures or obtain a permit. However, the commission estimates that the number of affected facilities requiring major changes to operations would not be large because the majority of recycling facilities already meet or exceed the 75% processing requirement in order to maintain profits. The commission expects that the proposed processing provision would affect a

relatively low number of facilities that claim to be recycling materials but that are actually receiving and storing materials on-site for long periods of time.

The commission anticipates that the costs to comply with the proposed rule could be significant, depending on the facility and what compliance option it chooses to pursue. For those sites that have significant backlogs of materials that would have to be processed in order to meet the 75% processing requirement, the commission estimates it would cost between \$20 to \$200 per additional ton processed, depending on the type of site and material being processed. If a facility decides to obtain a municipal solid waste permit or registration (the type of authorization that would apply to the great majority of facilities requiring an authorization) to operate as a transfer facility and store waste on-site, the costs of hiring a consultant, preparing the application, legal, and public notice costs would range from \$35,000 to \$250,000, depending on the type and location of the site, and the types of waste to be stored on-site. There could also be technical costs related to preparing the site to meet existing environmental standards. The site preparation costs would vary considerably, depending on the current condition of the site, its location, and what type of modifications would be required to meet the registration requirements. Costs associated with obtaining a permit for the disposal of municipal solid waste typically run upwards of \$1 million, in addition to site development expenses and cleanup of accumulated wastes.

The following is an analysis of the costs per employee for small and micro-businesses that are required to obtain a municipal solid waste permit to comply with the proposed rule. Small and micro-businesses are defined as having fewer than 100 or 20 employees respectively. A small business may pay an

additional \$2,500 per employee to comply with the proposed rule. A micro-business may pay an additional \$12,500 per employee to comply with the proposed rule. The overall costs to small or micro-businesses could be higher if affected facilities are required to conduct site modifications to comply with permit requirements.

LOCAL EMPLOYMENT IMPACT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed 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 disposing of municipal solid waste without an authorization and therefore, does not meet the definition of a major environmental rule. Furthermore, the proposed rule does not meet any of the four applicability requirements listed in §2001.0225(a). This proposed rule does not exceed any standard set by federal law for distinguishing facilities

improperly disposing of municipal solid waste from legitimate recycling facilities, and this proposed rule is specifically required by state law under THSC, §361.119. This proposed rule does not exceed the requirements of state law under THSC, §361.119, and the proposed rule 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 disposing of municipal solid waste without authorization from legitimate recycling facilities. This rule is not proposed 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. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rule and performed a preliminary analysis of whether Texas Government Code, Chapter 2007 is applicable. The commission's preliminary analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed 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 proposed rule, THSC, §361.119, directs the commission to develop this proposed 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. The recordkeeping and reporting requirements in this proposed rule attempt to identify municipal solid waste facilities operating unregulated as recycling facilities and require that they obtain the proper authorization with regulatory controls.

Nevertheless, the commission further evaluated this proposed rule and performed a preliminary analysis of whether this proposed rule constitutes a takings under Texas Government Code, Chapter 2007. The specific purpose of this proposed 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 proposed rule would substantially advance the stated purpose by requiring recordkeeping and reporting and imposing limitations on the storage of recyclable material. The records required to be kept and reports required to be filed 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 proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rule does not affect a landowner's rights in private real property because this proposed 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 proposed 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.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rule and found that the proposed rule is identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, or will affect an action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and therefore, will require that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. In accordance with the regulations of the Coastal Coordination Council, the commission reviewed the proposed rule for consistency with the CMP goals and policies. The CMP goal applicable to this proposed 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(1). The CMP policy applicable to this proposed rule is 31 TAC §501.14(d)(1) - (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 proposed rule is to make existing commission rules consistent with the new legislative changes made to THSC by HB 2912. The proposed 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 proposed rule will not have a direct or significant adverse effect on any CNRAs, nor will the proposed 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 seeks public comment on the preliminary consistency determination.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., May 28, 2002, and should reference Rule Log Number 2001-081-328-WS. For further information, please contact Michael Bame, Policy and Regulations Division, at (512) 239-5658.

SUBCHAPTER A: GENERAL INFORMATION

§330.2

STATUTORY AUTHORITY

The amendment is proposed 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 power 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 proposed amendment is also authorized by Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under TWC.

The proposed amendment implements THSC, §361.119; §361.061, which provides the commission with the authority to require and issue permits for solid waste facilities; and TWC, §5.103.

§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) - (58) (No change.)

(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 volume of each incoming load. 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 including, at a minimum, inspection of incoming loads to ensure they do not contain more than 5% by volume of non-recyclable waste and rejection by the recycling facility of those loads that contain more than 5% by volume of non-recyclable waste. After incoming loads are processed for recycling, as defined in §328.2 of this title (relating to Definitions), all resulting non-recyclable waste must be 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) damage to source-separated recyclable material during collection, unloading, and sorting of that material that renders it unmarketable, such as breakage of recyclable glass; and

(C) tramp materials, such as:

(i) glass from recyclable metal windows;

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

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

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

(61) [(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).

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

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

(64) [(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.

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

(66) [(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.

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

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

(69) [(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.

(70) (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).

(71) [(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).

(72) [(71)] **Litter** - Rubbish and putrescible waste.

(73) [(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.

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

(75) [(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.

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

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

(78) [(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.

(79) [(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.

(80) [(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.

(81) [(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.

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

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

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

(85) [(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.

(86) [(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.

(87) [(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.

(88) [(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.

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

(90) [(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.

(91) [(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.

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

(93) [(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.

(94) [(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).

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

(96) [(95)] **PCB** - Polychlorinated biphenyl molecule.

(97) [(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.

(98) [(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.

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

(100) [(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.

(101) [(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.

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

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

(104) [(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.

(105) [(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).

(106) [(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.

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

(108) [(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.

(109) [(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.

(110) [(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.

(111) [(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.

(112) [(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.

(113) [(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.

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

(115) [(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.

(116) [(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.

(117) [(116)] **Refuse** - Same as rubbish.

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

(119) [(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.

(120) [(119)] **Relevant point of compliance** - See point of compliance.

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

(122) [(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.

(123) [(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).

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

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

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

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

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

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

(130) [(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.

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

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

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

(134) [(133)] **Site** - Same as facility.

(135) [(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.

(136) [(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.

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

(138) [(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.

(139) [(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.

(140) [(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.).

(141) **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) damage to source-separated recyclable material during collection, unloading, and sorting of that material, such as breakage of recyclable glass, that renders the material unmarketable; and

(C) tramp materials, such as:

(i) glass from recyclable metal windows;

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

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

(142) [(140)] **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.

(143) [(141)] **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).

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

(145) [(143)] **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 [wastes], 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.

(146) [(144)] **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.

(147) [(145)] **Store** - To keep, hold, accumulate, or aggregate.

(148) [(146)] **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.

(149) [(147)] **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.

(150) [(148)] **Surface water** - Surface water as included in water in the state.

(151) [(149)] **SWDA** - Texas Solid Waste Disposal Act.

(152) [(150)] **TACB** - Texas Air Control Board and its successors.

(153) [(151)] **Texas Civil Statutes** - Vernon's Texas Revised Civil Statutes Annotated.

(154) [(152)] **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.

(155) [(153)] **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.

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

(157) [(155)] **Trash** - Same as Rubbish.

(158) [(156)] **Treatment** - Same as Processing.

(159) [(157)] **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.

(160) [(158)] **TWC** - Texas Water Commission.

(161) [(159)] **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.

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

(163) [(161)] **Unconfined water** - Water that is not controlled or impeded in its direction or velocity.

(164) [(162)] **Unit** - Municipal solid waste landfill unit.

(165) [(163)] **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.

(166) [(164)] **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.

(167) [(165)] **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.

(168) [(166)] **Washout** - The carrying away of solid waste by waters.

(169) [(167)] **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.

(170) [(168)] **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.

(171) [(169)] **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.

(172) [(170)] **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.

(173) [(171)] **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.

(174) [(172)] **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.

(175) [(173)] **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.

(176) [(174)] **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.