

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to §§332.3, 332.4, 332.23, 332.33, and 332.43 *without changes* to the proposed text as published in the April 26, 2002 issue of the *Texas Register* (27 TexReg 3542).

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adopted rule amendments implement the 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 330, Municipal Solid Waste, are adopted in a concurrent rulemaking (Rule Log Number 2001-081-328-WS).

#### SECTION BY SECTION DISCUSSION

Section 332.3, Applicability, has been amended to subject mulching operations and composting facilities that are exempt from notification, registration, and permitting requirements under subsection (d) to the recordkeeping, reporting, and storage limitation requirements in new §328.4 and §328.5.

The adopted sections in Chapter 328 apply to mulching and composting facilities because THSC, §361.119 addresses recycling facilities, and composting is specifically included in the definition of recycling found in THSC, §361.421(8) and in 30 TAC §330.2(115). In addition, the intent of the legislation was to apply to facilities that handle compostable materials, such as yard waste.

Section 332.4, General Requirements, has been amended by adding language to the introductory paragraph that refers to applicable penalties for violations. Amendments to several paragraphs include grammatical changes and appropriate references to statutes and regulations, consistent with §328.3, relating to general requirements for recycling facilities. The enforcement language of paragraph (3) has been deleted, because this is covered in the introductory paragraph. Paragraph (7) has been amended by providing an appropriate reference to 30 TAC §305.70, relating to Municipal Solid Waste Permit and Registration Modifications, which governs the addition or deletion of composting and recycling operations within the boundaries of permitted and registered municipal solid waste facilities. The amendment also parallels the language of the §328.3 to ensure that the management of all recyclable material does not create a nuisance or threaten or impair the environment or public health and safety, as directed in the statute. Paragraph (12) has been amended to add a heading, consistent with all other paragraphs in the section.

Section 332.23, Operational Requirements, has been amended to subject composting facilities requiring a notification under §332.3(c) to the requirements of the proposed new §328.4, relating to Limitations on Storage of Recyclable Materials and proposed new §328.5, relating to Reporting and Recordkeeping Requirements, in order that the requirements for composting facilities exempt from authorization under Chapter 332 not be more stringent than those for composting facilities requiring notification under Chapter 332.

Section 332.33, Required Forms, Applications, Reports, and Request to Use the Sludge Byproduct of Paper Production, has been amended by deleting a reference to TNRCC Form Number 3, "Annual

Report Form for Compost Facilities Requiring Registration or Permit,” because the requirement for the annual report that remains in the rule is sufficient to satisfy the recordkeeping requirements of §328.5(c), Reporting and Recordkeeping Requirements.

Section 332.43, Required Forms, Applications, and Reports, has been amended by deleting a reference to TNRCC Form Number 3, “Annual Report Form for Composting Facilities Requiring Registration or Permit,” because the requirement for the annual report that remains in the rule is sufficient to satisfy the recordkeeping requirements of new §328.5(c), Reporting and Recordkeeping Requirements.

#### 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 rules are not subject to §2001.0225 because they do not meet the definition of a “major environmental rule” as defined in that statute. Although the intent of the rules is to protect the environment or reduce risks to human health from environmental exposure, the rules 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 amendments to Chapter 332 are intended to identify and affect only those facilities improperly disposing of municipal solid waste without an authorization and, therefore, do not meet the definition of a major environmental rule. Furthermore, the rules do not meet any of the four applicability requirements listed in §2001.0225(a). These rules do not exceed any standard set by federal law for distinguishing facilities improperly disposing of municipal solid waste from legitimate recycling facilities, and these rules are specifically required by state law under THSC, §361.119.

These rules do not exceed the requirements of state law under THSC, §361.119, and the rules are 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 on distinguishing facilities improperly disposing of municipal solid waste without authorization from legitimate recycling facilities. These rules are 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. The commission solicited public comment on the draft regulatory impact analysis determination, but no comments were received.

#### TAKINGS IMPACT ASSESSMENT

The commission performed a takings impact assessment for these rules in accordance with Texas Government Code, §2007.043. The commission determined that Texas Government Code, Chapter 2007 does not apply to these rules 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 these rules, THSC, §361.119, directs the commission to develop these 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, 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 these rules 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 these rules and performed an analysis of whether these rules constitute a takings under Texas Government Code, Chapter 2007. The specific purpose of these rules 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 rules 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 these rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the rules do not affect a landowner's rights in private real property because these rules do 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, these rules do 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 or health and safety controls. Therefore, the adopted rules will not constitute a takings under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has prepared a consistency determination for the rules pursuant to 31 TAC §505.22, and has found that the rules are consistent with the applicable Texas Coastal Management Program (CMP) goals and policies. The rules are subject to the CMP and must be consistent with applicable goals and policies that are found in 31 TAC §501.12 and §501.14. The CMP goal applicable to the rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values in Coastal Natural Resource Areas. However, the rules do not govern any of the activities that are within the designated coastal zone management area or otherwise specifically identified under the Texas Coastal Management Act or related rules of the Coastal Coordination Council. The commission solicited public comment, but no comments were received.

#### PUBLIC COMMENT

The public comment period closed on June 7, 2002. A total of two commenters provided both general and specific written comments on the proposed rules. The commenters are: Texas Chapter National Solid Wastes Management Association (NSWMA) and Trinity Waste Services (TWS).

## RESPONSE TO COMMENTS

NSWMA commented that proposed §332.23(5) cross-references the storage limitation and recordkeeping requirements in §328.4 and §328.5 that will apply to composting facilities. The statement “unless exempted from those requirements under the terms of those sections” should be inserted at the end to acknowledge that certain exemptions could also apply to composting facilities.

**The commission disagrees with the proposed additional language in §332.23(5), as the references in that subsection to the requirements of §328.4 and §328.5 apply to the exemptions specified in those sections as well. The commission has made no changes in response to this comment.**

TWS commented that the commission should expand its current draft rule to impose additional management obligations on composting facilities. The commission has proposed one set of rules that would be applicable to both recycling facilities and composting facilities. TWS believes this is not appropriate because composting facilities are more complex and pose more of an environmental risk than do recycling facilities. TWS believes that since composting facilities are more likely to result in a nuisance and present more of a risk to the environment and public health and safety, more strict rules are necessary to guard against those risks.

The commission rules should, and generally do, vary the level of oversight of a facility based on where that facility would be placed on the continuum that runs between those facilities that are least likely to pose environmental risks to those facilities that are more likely to pose environmental risks.

Composting facilities handle organic matter with the potential to impact air quality and water quality.

Composting facilities are subject to air quality requirements under §328.8. Composting facilities are also subject to regulations for the protection of surface water and groundwater. Given that composting facilities have been recognized as being more likely to cause environmental hazards than recycling facilities, TWS believes this rule package should provide stricter requirements for composting facilities than for recycling facilities.

**The commission disagrees with this comment due to the fact that the particular characteristics and regulatory requirements applicable to composting facilities are addressed in the prior and adopted rules in Chapter 332. The commission has made no changes in response to this comment.**

## **SUBCHAPTER A: GENERAL INFORMATION**

### **§332.3, §332.4**

#### **STATUTORY AUTHORITY**

The amendments are 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 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 amendments are 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.

#### **§332.3. Applicability.**

(a) Permit required. The following compost operations are subject to the general requirements found in §332.4 of this title (relating to General Requirements), and the requirements set forth in Subchapters D, E, F, and G of this title (relating to Operations Requiring a Permit; Source-Separated Recycle; and Household Hazardous Waste Collection; End-Product Standards), and the air quality

requirements in §332.8 of this title (relating to Air Quality Requirements). These facilities are required to obtain a permit from the commission pursuant to Chapters 305 of this title (relating to Consolidated Permits) and 281 of this title (relating to Application Processing).

(1) Operations that compost mixed municipal solid waste.

(2) Operations that add any amount of mixed municipal solid waste as a feedstock in the composting process.

(b) Registration required. The following compost operations are subject to the requirements of the General Requirements found in §332.4 of this title (relating to General Requirements), the requirements set forth in Subchapters C and G of this title (relating to Operations Requiring a Registration; and End-Product Standards), and the air quality requirements in §332.8 of this title (relating to Air Quality Requirements).

(1) Operations that compost municipal sewage sludge, except those facilities that compost municipal sewage sludge with mixed municipal solid waste.

(2) Operations that compost positively-sorted organic materials from the municipal solid waste stream.

(3) Operations that compost source-separated organic materials not exempted under subsection (d) of this section.

(4) Operations that compost grease trap waste.

(5) Operations that compost disposable diapers or paper products soiled by human excreta.

(6) Operations that compost the sludge byproduct generated from the production of paper if the executive director determines that the feedstock is appropriate pursuant to §332.33 of this title (relating to Required Forms, Applications, Reports, and Request to Use the Sludge Byproduct of Paper Production).

(7) Operations that incorporate any of the materials set forth in paragraphs (1) - (6) of this subsection with source-separated yard trimmings, clean wood material, vegetative material, paper, manure, meat, fish, dairy, oil, grease materials or dead animal carcasses.

(c) Operations requiring notification. The following operations are subject to all requirements set forth in Subchapter B of this title (relating to Operations Requiring Notification), the general requirements found in §332.4 of this title (relating to General Requirements), and the air quality requirements in §332.8 of this title (relating to Air Quality Requirements):

(1) Operations that compost any source-separated meat, fish, dead animal carcasses, oils, greases, or dairy materials.

(2) Operations that incorporate any of the materials set forth in paragraph (1) of this subsection with source-separated yard trimmings, clean wood material, vegetative material, paper, or manure.

(d) Operations exempt from facility notification, registration, and permit requirements. The following operations are subject to the general requirements found in §332.4 of this title (relating to General Requirements), and the air quality requirements in §332.8 of this title (relating to Air Quality Requirements), and exempt from notification, registration and permit requirements found in Subchapter B of this chapter (relating to Operations Requiring Notification), Subchapter C of this chapter (relating to Requirements for Registered Facilities), and Subchapter D of this chapter (relating to Permit Required). Operations under paragraphs (1) and (3) of this subsection are subject to the requirements of an exempt recycling facility under §328.4 and §328.5 of this title (relating to Limitations on Storage of Recyclable Materials; and Reporting and Recordkeeping Requirements).

(1) Operations that compost only materials listed in subparagraphs (A) and (B) of this paragraph.

(A) Source-separated yard trimmings, clean wood material, vegetative material, paper, and manure.

(B) Source-separated industrial materials listed in §332.4(10) of this title (relating to General Requirements) excluding those items listed in §332.4(10)(A), (F), (G), (H), and (J) of this title.

(2) Agricultural operations that generate and compost agricultural materials on-site.

(3) Mulching operations.

(4) Land application of yard trimmings, clean wood materials, vegetative materials, and manure at rates below or equal to agronomic rates as determined by the Texas Agricultural Extension Service.

(5) Application of paper that is applied to land for use as an erosion control or a soil amendment.

(6) On-site composting of industrial solid waste at a facility that is in compliance with §335.2 of this title (relating to Permit Required) and §335.6 of this title (relating to Notification Requirements).

**§332.4. General Requirements.**

All composting facilities and backyard operations shall comply with all of the following general requirements. Violations of these requirements are subject to enforcement by the commission and may result in the assessment of civil or administrative penalties pursuant to Texas Water Code, Chapter 7 (relating to Enforcement).

(1) Compliance with Texas Water Code. The activities that are subject to this chapter shall be conducted in a manner that prevents the discharge of material to or the pollution of surface water or groundwater in accordance with the provisions of the Texas Water Code, Chapter 26 (relating to Water Quality Control).

(2) Nuisance conditions. The composting, mulching, and land application of material shall be conducted in a sanitary manner that shall prevent the creation of nuisance conditions as defined in §330.2 of this title (relating to Definitions) and as prohibited by the Texas Health and Safety Code, Chapters 341 and 382 (relating to Minimum Standards of Sanitation and Health Protection Measures; and Clean Air Act), the Texas Water Code, Chapter 26 (relating to Water Quality Control), §101.4 of this title (relating to Nuisance), and any other applicable regulations or statutes.

(3) Discharge to surface water or groundwater. The discharge of material to or the pollution of surface water or groundwater as a result of the beneficial use or reuse and recycling of material is prohibited.

(4) Compliance with federal laws. Facility operations shall be conducted in accordance with all applicable federal laws and regulations.

(5) Compliance with state laws. Facility operations shall be conducted in accordance with all applicable laws and regulations of the State of Texas.

(6) Facility operations. Facility operations shall not be conducted in a manner which causes endangerment of human health and welfare, or the environment.

(7) Operations on a municipal solid waste landfill unit. No composting activities shall be conducted within the permitted boundaries of a municipal solid waste landfill without prior approval by the executive director as required by §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications).

(8) Operational requirement. Operations shall be conducted in such a manner to ensure that no unauthorized or prohibited materials are processed at the facility. All unauthorized or prohibited materials received by the facility shall be disposed of at an authorized facility in a timely manner.

(9) Leachate. Leachate from landfills and mixed municipal solid waste composting operations shall not be used on any composting process, except mixed municipal solid waste

composting, and shall not be added after the designation of an end-product grade unless the product is reanalyzed to determine end-product quality.

(10) Nonhazardous industrial solid waste. This chapter applies to the composting, mulching, and land application of only the following nonhazardous industrial solid waste when the composting occurs on property that does not qualify for the exemption from the requirement of an industrial solid waste permit pursuant to §335.2(d) of this title (relating to Permit Required):

- (A) dead animal carcasses;
- (B) clean wood material;
- (C) vegetative material;
- (D) paper;
- (E) manure (including paunch manure);
- (F) meat feedstocks;
- (G) fish feedstocks;

(H) dairy material feedstocks;

(I) yard trimmings; and

(J) oils and greases.

(11) Industrial and hazardous waste. Any of the materials listed in paragraph (10) of this section that are not managed in accordance with the requirements of this chapter, all hazardous wastes, and any nonhazardous industrial solid wastes not listed in paragraph (10) of this section shall be managed in accordance with Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

(12) Chemicals of concern. The operator of a compost facility shall address the release of a chemical of concern from a compost facility to any environmental media under the requirements of Chapter 350 of this title (relating to Texas Risk Reduction Program) to perform the corrective action.

**SUBCHAPTER B: OPERATIONS REQUIRING A NOTIFICATION**

**§332.23**

**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 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 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.

**§332.23. Operational Requirements.**

Operation of the facility shall comply with all of the following operational requirements.

(1) Aerobic composting required. The facility shall utilize functionally aerobic composting methods, although an anaerobic composting phase may be utilized in the early stages of processing, if it is followed by a period of functionally aerobic composting.

(2) Pathogen reduction. One of the following protocols shall be used to reduce pathogens during composting:

(A) Using either the within-vessel composting method or the static aerated pile composting method, the temperature of the composting materials shall be maintained at 55 degrees Centigrade or higher for three days; or

(B) Using the windrow composting method, the temperature of the composting materials shall be maintained at 55 degrees Centigrade or higher for 15 days or longer. During the period when the composting materials are maintained at 55 degrees Centigrade or higher, there shall be a minimum of five turnings of the windrow.

(3) Prohibited substances. Fungicides, herbicides, insecticides or other pesticides that contain constituents listed in 40 CFR Part 261, Appendix VIII-Hazardous Constituents or on the Hazardous Substance List as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) shall not be applied to or incorporated into feedstocks, in-process materials or processed materials.

(4) The operator of a compost facility shall address the release of a chemical of concern from a compost facility to any environmental media under the requirements of Chapter 350 of this title (relating to Texas Risk Reduction Program) to perform the corrective action.

(5) The facility shall be subject to the requirements of §328.4 of this title (relating to Limitations on Storage of Recyclable Materials) and §328.5 of this title (relating to Reporting and Recordkeeping Requirements).

**SUBCHAPTER C: OPERATIONS REQUIRING A REGISTRATION**

**§332.33**

**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 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 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 the TWC.

**§332.33. Required Forms, Applications, Reports, and Request To Use the Sludge Byproduct of Paper Production.**

(a) The operator of the compost facility shall submit the following:

(1) TNRCC Form Number 2. The operator shall submit TNRCC Form Number 2, "Notice of Intent to Apply for a Compost Facility Registration or Permit," available from the commission; and

(2) Registration application. The registration application described in §332.34 of this title (relating to Registration Application).

(3) Annual report. The operator shall submit annual written reports. These reports shall at a minimum include input and output quantities, a description of the end-product distribution, and all results of any required laboratory testing. A copy of the annual report shall be kept on-site for a period of five years.

(4) Final product testing report. Facilities requiring registration must submit reports on final product testing to the executive director in compliance with §332.71(j)(1) of this title (relating to Sampling and Analysis Requirements for Final Product) on a semiannual basis.

(b) In order to use the sludge byproduct of paper production as a composting feedstock, the operator must first receive permission from the executive director.

(1) The operator shall submit a request to the executive director to use the sludge byproduct as a feedstock. The request may also be submitted with a registration application.

(2) At a minimum, the request shall present all of the following:

(A) identification of the source of the sludge byproduct;

(B) a general description of the process that produces the sludge byproduct including the use of any elemental chlorine bleaches used in the process;

(C) analytical results that identify concentrations for polychlorinated dibenzo-p-dioxins (PCDDs) and polychlorinated dibenzofurans (PCDFs); and

(D) a demonstration that the final product will not be harmful to human health or the environment.

(3) The executive director or his designee shall, after review of the request, determine if he will approve or deny the request.

(4) An operator that receives approval from the executive director to include the sludge byproduct of paper production as a composting feedstock, shall submit a new request to the executive director in accordance with this subsection if a significant change, such as a new source for the feedstock, is planned.

#### **SUBCHAPTER D: OPERATIONS REQUIRING A PERMIT**

##### **§332.43**

#### **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 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 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 the TWC.

#### **§332.43. Required Forms, Applications, and Reports.**

The operator shall submit all of the following.

(1) TNRCC Compost Form Number 2. The operator shall submit TNRCC Compost Form Number 2, "Notice of Intent to Apply for a Compost Facility Registration or Permit," and a permit application prepared in accordance with the requirements of §332.47 of this title (relating to Permit Application Preparation).

(2) Annual report. The operator shall submit annual written reports. These reports shall at a minimum include input and output quantities, a description of the end-product distribution, and all results of any required laboratory testing. A copy of the annual report shall be kept on-site for a period of five years.

(3) Final product testing report. Facilities requiring registration must submit reports on final product testing to the executive director in compliance with §332.71(j)(1) of this title (relating to Sampling and Analysis Requirements for Final Product) on a monthly basis.

(4) Engineer's appointment. An engineer's appointment which consists of a letter from the applicant to the Executive Director identifying the engineer responsible for the submission of the plan, specifications and any other technical data to be evaluated by the commission regarding the project.