

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§332.3, 332.4, 332.23, 332.33, and 332.43.

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

The purpose of the proposed amendments 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, and 30 TAC Chapter 330, Municipal Solid Waste are published in the Proposed Rules section of this issue of the *Texas Register*.

#### SECTION BY SECTION DISCUSSION

Section 332.3, Applicability, is proposed to be 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 proposed new §328.4 and §328.5. The proposed new 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, is proposed to be amended by adding language to the introductory paragraph that refers to applicable penalties for violations. Proposed amendments to several paragraphs include grammatical changes and appropriate references to statutes and regulations, consistent with proposed new §328.3, relating to General Requirements for recycling facilities. The enforcement language of paragraph (3) is proposed to be deleted, because this is covered in the introductory paragraph. Paragraph (7) is proposed to be 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 proposed amendment also parallels the language of the proposed new §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) is proposed to be amended to add a heading, consistent with all other paragraphs in the section.

Section 332.23, Operational Requirements, is proposed to be 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, is proposed to be 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 new §328.5(c), Reporting and Recordkeeping Requirements.

Section 332.43, Required Forms, Applications, and Reports, is proposed to be 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.

#### 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 rules are in effect, no significant fiscal implications are anticipated for units of state and local government due to implementation of the proposed rules. 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.

These proposed rules are 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 that mulching or composting facilities that are exempt from municipal solid waste registration and permitting would be required to comply with new recordkeeping, reporting, and storage limitation requirements being proposed in concurrent rulemaking. Additionally, composting operations requiring a notification under Chapter 332 would not have to comply with the recordkeeping and reporting requirements, but would have to comply with the storage limitation provisions.

The proposed rules would affect all composting and mulching facilities statewide that are not permitted or registered under Chapter 332 or 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. The commission estimates that a minimum of approximately 134 compost facilities could potentially be affected, but expects that many of these facilities would qualify for the exclusions provided in the legislation.

Composting and mulching facilities exempt from registration or permitting under Chapters 330 and 332 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 rules would require new or existing sites 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, any storage of materials, 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. Those facilities that are registered or permitted by the commission would be exempt from these provisions.

The new storage limitation provision would limit the accumulation of unprocessed materials at exempt and notification-tier composting or mulching facilities. 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 facilities exempt from registration and permitting under Chapters 330 and 332. Affected facilities that do not meet the processing requirements will either have to change their operations or obtain a registration or permit. 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 or local 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 rules are in effect, since they would more clearly define what types of facilities are eligible for recycling facility

exemptions, the public benefit anticipated from the proposed rules would be increased compliance with commission regulations and increased environmental protection.

These proposed rules are 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 rules will affect all composting and mulching facilities statewide that are not already registered or permitted under Chapter 332 or 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. The commission estimates that a minimum of approximately 134 compost facilities could potentially be affected, but expects that many of those facilities would qualify for the exclusions listed in the legislation.

In order to operate, composting and mulching facilities exempt from permitting and registration under Chapters 330 and 332 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 rules will require new or existing sites 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, any storage of materials, 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 estimate that the recordkeeping and reporting requirements would cost affected owners and operators more than \$500 a year. Those facilities that are permitted by the commission would be exempt from these provisions.

The proposed rules would implement a new storage limitation provision that would limit the accumulation of unprocessed materials at all composting and mulching facilities exempt from permitting and registration under Chapters 330 and 332. 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 permitting and registration under Chapters 330 and 332. Affected facilities that currently do not meet the processing requirements will either have to change their operations or obtain a registration or permit. Although the total number of affected facilities is unknown, the commission recognizes that existing facilities impacted by these requirements would be required to make changes to existing operating procedures or obtain a permit. However, it is anticipated that the number of affected facilities requiring major changes to operations would not be large because the majority of composting and mulching 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 composting or mulching 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 rules 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 from \$20 to \$200 per additional ton processed, depending on the type of site and material being processed. If a facility decides to obtain a registration (the type of authorization that would apply to the great majority of facilities requiring an authorization) to operate as a solid waste transfer station or composting facility under Chapters 330 or 332 and store waste on-site, the costs of hiring a consultant, preparing the application, application preparation, 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 rules. These proposed rules are 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 rules will affect all composting and mulching facilities statewide that are not already registered or permitted under Chapter 332 or 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. The commission estimates that a minimum of approximately 134 composting facilities, many of which are anticipated to be owned and operated by small or micro-businesses, could potentially be affected, but expects that many of those facilities would qualify for the exclusions provided in the legislation.

In order to operate, composting and mulching facilities exempt from registration and permitting under Chapters 330 and 332 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 rules would require new or existing sites 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, any storage of materials, 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 the recordkeeping and reporting requirements will cost affected owners and operators more than \$500 a year. Those facilities that are permitted by the commission would be exempt from these provisions.

The proposed rules would implement a new storage limitation provision which would limit the accumulation of unprocessed materials at all composting and mulching facilities exempt from permitting and registration under Chapters 330 and 332. 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 permitting and registration under Chapters 330 and 332. Affected facilities that currently do not meet the processing requirements will either have to change their operations or obtain a permit. Although the total number of affected facilities is unknown, the commission recognizes that there are small and micro-businesses that would be impacted by these requirements and would be required to make changes to existing operating procedures or obtain a registration or permit. However, it is anticipated that the number of affected facilities requiring major changes to operations would not be large because the majority of composting and mulching 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 composting or mulching 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 rules could be significant, depending on the facility and which 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 from \$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 solid waste transfer station or composting facility under Chapters 330 or 332 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 relating 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 rules. 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 rules. A micro-business may pay an additional \$12,500 per employee to comply with the proposed rules. 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 these proposed rules and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are 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 rules are 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 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 proposed 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 proposed rules do not meet any of the four applicability requirements listed in §2001.0225(a). These proposed 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 proposed rules are specifically required by state law under THSC, §361.119. These proposed rules do not exceed the requirements of state law under THSC, §361.119, and the proposed 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 proposed rules are 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 these proposed rules 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 these proposed 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 proposed rules, THSC, §361.119, directs the commission to develop these proposed 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 proposed 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 proposed rules and performed a preliminary analysis of whether these proposed rules constitute a takings under Texas Government Code, Chapter 2007. The specific purpose of these proposed 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 proposed 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 proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rules do not affect a landowner's rights in private real property because these proposed 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 proposed 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.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has prepared a consistency determination for the proposed rules pursuant to 31 TAC §505.22, and has found that the proposed rules are consistent with the applicable Texas Coastal Management Program (CMP) goals and policies. The proposed 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 (CNRAs). The proposed 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. Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

#### 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**

### **§332.3, §332.4**

#### **STATUTORY AUTHORITY**

The amendments are 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 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 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.

The proposed amendments implement 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.

#### **§332.3. Applicability.**

(a) - (c) (No change.)

(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) - (6) (No change.)

#### **§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 [which] are subject to this chapter shall be conducted in a manner that [which] 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 [which] shall prevent the creation of nuisance conditions as defined in §330.2 of this title (relating to Definitions) and as prohibited [mandated] 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), [and] the Texas Water Code, Chapter 26 (relating to Water Quality Control), §101.4 of this title (relating to Nuisance), [as defined in these regulations,] 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 [resulting from] the beneficial use or reuse and recycling of material is prohibited [subject to enforcement by the commission and may result in the assessment of civil penalties].

(4) - (6) (No change.)

(7) Operations on a municipal solid waste landfill unit. No composting activities shall be conducted within the permitted boundaries [on the cap] 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) [the commission on a case by case basis].

(8) (No change.)

(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 [subsequent to] 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 [which] 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) - (J) (No change.)

(11) Industrial and hazardous waste. Any of the materials listed in paragraph (10) of this section that [which] 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 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 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; §361.032, which provides the commission and local governments with right of entry to inspect facilities and investigate conditions concerning solid waste management and control; §361.061, which provides the commission with the authority to require and issue permits for solid waste facilities; and TWC, §5.103.

**§332.23. Operational Requirements.**

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

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

(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 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 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 the 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.

**§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) - (2) (No change.)

(3) Annual report. The operator shall submit annual written reports [using TNRCC Form Number 3, “Annual Report Form for Compost Facilities Requiring Registration or Permit,” available from the commission]. 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) (No change.)

(b) (No change.)

**SUBCHAPTER D: OPERATIONS REQUIRING A PERMIT**

**§332.43**

**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 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 the 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.

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

The operator shall submit all of the following.

(1) (No change.)

(2) Annual report. The operator shall submit annual written reports [using TNRCC Form Number 3, “Annual Report Form for Composting Facilities Requiring Registration or Permit,” available from the commission]. 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) - (4) (No change.)