

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §330.4, Permit Required. Section 330.4 is adopted *with change* to the proposed text as published in the March 29, 2002 issue of the *Texas Register* (27 TexReg 2412).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

In accordance with 1 TAC §91.65, regarding the procedures for filing rule packages with the *Texas Register*, a rule shall only have one pending amendment at a time with the exception of rules containing only definitions. Therefore, to comply with this requirement, this rulemaking combines three separate solid waste provisions from House Bill (HB) 2912, 77th Legislature, 2001, each of which requires an amendment to §330.4. They are as follows: Closed Landfill Facilities; Recycling Facilities; and Disposal of Animal Remains.

The adopted closed landfills amendment implements HB 2912, Article 9, §9.04, which amended Texas Health and Safety Code (THSC), §361.120, requiring any municipal solid waste landfill that has either stopped accepting waste, or only accepted waste due to an emergency authorization, for a period of five years or longer, to obtain a permit amendment before it can be reopened to accept waste again.

Reopened municipal waste landfills shall only accept waste if the permittee demonstrates compliance with all current state, federal, and local requirements including, but not limited to, the requirements of Subtitle D of the federal Resource Conservation and Recovery Act of 1976 (42 United States Code (USC), §§6901, *et seq.*) and the implementing Texas state regulations.

The adopted recycling facilities amendment implements HB 2912, Article 9, §9.03, which amended THSC, §361.119, by requiring 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. Corresponding changes to 30 TAC Chapter 328, Waste Minimization and Recycling; 30 TAC Chapter 330, Municipal Solid Waste, §330.2; and 30 TAC Chapter 332, Composting are adopted in a concurrent rulemaking (Rule Log Number 2001-081-328-WS).

The adopted disposal of animal remains amendment implements HB 2912, Article 17, §17.01, which amended the Texas Occupations Code by adding §801.361, Disposal of Animal Remains, to allow veterinarians to dispose of animal remains by burial or burning under limited circumstances. Texas Occupations Code, §801.361 allows veterinarians to burn or bury animal remains without a permit or registration only if they do so on their own property, the property is in a county with a population of less than 10,000, and they do not charge for the burning or burial. The section also restricts the commission from adopting a rule that prohibits conduct authorized by the section. The existing §330.4 prohibits any person from storing, processing, removing, or disposing of any municipal solid waste unless such activity is authorized by a permit or other authorization from the commission, except as provided for in subsections (c) - (h). Animal remains are considered municipal solid waste, and there is no provision in subsections (c) - (h) that allows the disposal of animal remains consistent with the authorization provided in HB 2912. Therefore, the commission adopts an amendment to Chapter 330 to make the existing municipal solid waste rules consistent with the requirements of HB 2912. On May 22, 2002, the commission approved a separate rulemaking, adopting an amendment to 30 TAC Chapter

111, Control of Air Pollution from Visible Emissions and Particulate Matter, (Rule Log Number 2001-088-111-AI), in order to make existing rules on burning consistent with the new legislation.

SECTION DISCUSSION

Section 330.4(f), Permit Required, is adopted with change to the proposed text. Section 330.4(f) clarifies which facilities are exempt from registration and permit requirements, and makes some of those facilities subject to the requirements of new §§328.3 - 328.5, relating to General Requirements; Limitations on Storage of Recyclable Materials; and Reporting and Recordkeeping Requirements. Section 330.4(f) has been reorganized from one lengthy subsection into paragraphs and subparagraphs for clarity purposes. The term “recyclable material” replaces “recyclable waste” to be consistent with the definition of recyclable material in §330.2, which states that recyclable material is not solid waste. Section 330.4(f) has been reworded since proposal to clarify and simplify the rule language. The commission has made a change from proposal to clarify that all composting facilities, not just those exempt under Chapter 332, are exempt from registration and permitting under Chapter 330, as long as they are in compliance with Chapter 332.

The prior §330.4(f) exempted facilities used as collection and processing points for nonputrescible recyclable wastes. Adopted §330.4(f)(1)(B) replaces the term “recyclable wastes” with “recyclable materials,” as aforementioned, and specifies that solid waste permit and registration exemptions apply to a facility that serves as a collection and processing point for only nonputrescible source-separated

recyclable materials. The addition of the terms “only” and “source-separated” creates a clear distinction, lacking in the prior rule, between an exempt recycling facility and a solid waste facility that also recycles. Additional adopted language in §330.4(f)(1)(B) requires facilities that are exempt from registration and permitting under that subsection to comply with the requirements of adopted new §§328.3 - 328.5, in order to maintain their exempt status.

A concurrent rulemaking (Rule Log Number 2001-081-328-WS) defines “Incidental amount(s) of non-recyclable waste.” Examples of incidental amounts include “tramp materials” such as glass from recyclable metal windows, nails and roofing felt attached to recyclable shingles, nails and sheetrock attached to recyclable lumber generated through the demolition of buildings; and non-recyclable or food-contaminated containers or paper placed in a municipal curbside recycling bin, provided that in each instance, dual collection and transportation systems are in place for recyclable material and non-recyclable waste, generators are 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.

Section 330.4(f)(1)(C) has been adopted with change to the proposed text by adding: “a collection and processing point for mulching or composting of only source-separated recyclable material, provided that the facility is in compliance with Chapter 332 of this title (relating to Composting).” The change was made in response to a commenter pointing out that mulching and composting facilities are appropriately regulated under Chapter 332, and should not be required to be authorized under the municipal solid waste regulations of Chapter 330. Adopted §330.4(f)(1)(C) modifies the definition of a compost facility

that is exempt from registration and permitting under Chapter 330 to conform to the Chapter 332 definition of an exempt composting facility, and requires the facility to comply with Chapter 332 and the requirements of proposed new §328.4 and §328.5 in order to maintain its exemption.

The prior rule language exempting a baling operation at a recycling or materials recovery facility that handles only nonputrescible recyclable waste has been deleted because such baling operations are a subset of a more general type of facility exempt under the prior and adopted rules (those covered by §330.4(f)(1)(B) in the adopted rule); hence the “baling exemption” is redundant and unnecessary.

Adopted §330.4(x) is adopted with change to the proposed text. Section 330.4(x) implements the changes to THSC, §361.120, relating to notice of hearing and requirements for the reopening of Type I, Type I-AE, Type IV, or Type IV-AE municipal solid waste landfills that have either stopped accepting waste, or only accepted waste in accordance with an emergency authorization, for a period of five years or longer.

Section 330.4(y) is adopted with change to the proposed text. Section 330.4(y) allows any veterinarian who is licensed by the Texas State Board of Veterinary Medical Examiners within a county of population of less than 10,000 to dispose of the remains of an animal by burial and/or burning without a permit or registration if the disposal occurs on property owned by the veterinarian and the veterinarian does not charge for the disposal.

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 rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in that statute. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a).

A major environmental rule means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way 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. This rule does not satisfy the definition of a major environmental rule. This rulemaking made three changes to §330.4. First, §330.4(f) has been amended to limit the type of facilities or sites that are not required to obtain a municipal solid waste permit or registration. Although the intent of this amendment is to protect the environment by ensuring that solid waste processing facilities are not allowed to operate as unregulated recycling facilities, the amendment is not a major environmental rule because it is not expected to adversely affect in a material way 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. This amendment will not adversely affect these items because it will only apply to a limited number of solid waste processing facilities. Second, §330.4(x) was added which specifies that a major permit amendment is required to reopen certain municipal solid waste facilities. This amendment is not a major environmental rule because its specific intent is to alter the type of commission authorization required to reopen certain inactive municipal solid waste facilities. The requirements of this rule amendment will not impose any additional technical requirements on municipal solid waste permittees, but will only affect notice and procedural

requirements. Third, §330.4(y) was added which specifies that veterinarians in certain counties will not be required to obtain a commission municipal solid waste permit or registration in order to burn or bury animal remains if specific requirements are met. This rule does not qualify as a major environmental rule because it does not have as its specific intent the protection of the environment or the reduction of risk to human health from environmental exposure. The specific intent of this amendment is to establish that the commission will not require certain veterinarians to obtain a municipal solid waste permit or registration prior to engaging in specific types of animal disposal.

In addition, the rule is not subject to §2001.0225 because the rule does not meet any of the four applicability requirements listed in §2001.0225(a). The rule does not exceed a standard set by federal law because there are no comparable federal standards on the specific points addressed by this rulemaking. The rule does not exceed an express requirement of state law because it is in direct response to HB 2912, 77th Legislature, 2001, and does not exceed the requirements of this bill. This rule does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. This rule does not adopt a rule solely under the general powers of the agency, but rather under specific state law, namely HB 2912, §§9.03, 9.04, and 17.01. Finally, this rulemaking is not adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure. The commission solicited public comment on the draft regulatory impact analysis determination, but no comments were received.

The commission performed a takings impact assessment for this rule in accordance with Texas Government Code, §2007.043. The specific purpose of the rulemaking is to implement certain provisions of HB 2912. The rule implements the provisions of HB 2912 that direct the commission to:

- 1) ensure that solid waste processing facilities are not allowed to operate as unregulated recycling facilities;
- 2) require that a permittee obtain a permit amendment to reopen certain municipal solid waste facilities; and
- 3) allow certain veterinarians to dispose of animal remains by burying or burning, if certain requirements are met, without obtaining a commission permit or registration.

The rule will substantially advance these stated purposes by providing specific provisions in §330.4 on the aforementioned matters. The rule regarding solid waste processing facilities limits the type of facilities or sites that are not required to obtain a municipal solid waste permit or registration. While this rule will require that additional sites or facilities obtain a permit or registration, it will not restrict or limit the owner's right to the property. The rule regarding the disposal of animal remains by veterinarians does not affect real property because it specifies that a commission municipal solid waste permit or registration is not required in order for veterinarians in certain counties to bury or burn animal remains on their own property. The rule regarding closed landfills will not affect real property because it does not prohibit permittees from resuming operations at certain municipal solid waste facilities, but requires that a permittee obtain a permit amendment prior to reopening the facility. Therefore, the adopted rule will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking and determined that the rule is identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and will affect an action/authorization

identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. In accordance with the regulations of the Coastal Coordination Council, the commission reviewed the rulemaking for consistency with the Texas Coastal Management Program (CMP) goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs) in accordance with 31 TAC §501.12(l). The CMP policy applicable to this rulemaking 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 rule is to make existing commission rules consistent with the new legislative changes made to THSC by HB 2912. The rule requires any municipal solid waste landfill that has either stopped accepting waste, or only accepted waste due to an emergency authorization, for a period of five years or longer, to obtain a permit amendment before it can be reopened to accept waste again. Reopened municipal waste landfills shall only accept waste if the permittee demonstrates compliance with all current state, federal, and local requirements including, but not limited to, the requirements of Subtitle D of the Federal Resource Conservation and Recovery Act of 1976 (42 USC, §§6901 *et seq.*) and the implementing Texas state regulations. The commission anticipates that promulgation and enforcement of the rule will not have a direct or significant adverse effect on any CNRAs, nor will the rulemaking have a substantial effect on commission actions subject to CMP. Therefore, the

commission has made a finding of consistency with the applicable goals and policy. The commission solicited public comment, but no comments were received.

PUBLIC COMMENT

The public comment period closed on April 29, 2002. A total of six commenters provided both general and specific written comments on the proposed rule. The commenters are: Commercial Metals Company; Compost Advisory Council of the Recycling Alliance of Texas (the Council); Lone Star Chapter Solid Waste Association of North America; Texas Chapter National Solid Wastes Management Association; Texas Disposal Systems; and Trinity Waste Services (TWS).

RESPONSE TO COMMENTS

Recycling Facilities:

Commercial Metals Company (CMC), Texas Chapter National Solid Wastes Management Association (NSWMA), and Texas Disposal Systems commented that §330.4(f) should not apply to the legitimate metal recycling industry.

The commission disagrees with this comment. Statutory authority for the proposed rule includes HB 2912, §9.03, 77th Legislature, 2001, which directs the agency to ensure that solid waste processing facilities are not allowed to operate as unregulated recycling facilities. The legislation provides that, under certain conditions, facilities that reuse or smelt recyclable materials or metals are not subject to regulation under rules adopted under that statute. Provisions for this exclusion and others specified in the legislation (including local governments and landfill affiliates) are

included in the adopted Chapter 328 recycling rules (Rule Log Number 2001-081-328-WS). The commission has made no changes in response to this comment.

The Council commented that some of the proposed language in §330.4(f)(1)(C) is not needed because compost facilities are not permitted through Chapter 330, but all composting facilities must comply with Chapter 332. The Council states that revision is needed to eliminate the need for double permitting (under both Chapters 330 and 332).

The commission agrees with this comment. Provisions for the registration and permitting of mulching and composting facilities are contained in Chapter 332, and are required in lieu of, not in addition to, the requirements of Chapter 330. The suggested change would clarify this distinction. In addition, the adopted amendments to Chapter 332 (Rule Log Number 2001-081-328-WS) will apply the requirements of §328.4 and §328.5 to exempt and notification-tier composting facilities. Since registered and permitted composters would not be subject to regulation under Chapter 328, these references should appropriately be deleted as well. The rule has been changed in response to this comment.

The Texas Chapter National Solid Wastes Management Association and Texas Disposal Systems commented that §330.4(f) needs further clarification by adding a definition of “incidental amounts” of putrescible or non-recyclable waste, with an established threshold such as 5%, to be applied in enforcement of the regulation.

The commission finds that this comment does not apply to the rules considered in this proposal. A definition of “incidental amount(s) of non-recyclable waste” has been adopted in a concurrent rulemaking to §328.2 (Rule Log Number 2001-081-328-WS). The commission has made no changes in response to this comment.

The Texas Chapter National Solid Wastes Management Association and Texas Disposal Systems commented that commission employees should be authorized to inspect a facility’s incoming loads and documentation of the sale and disposal of material leaving the facility.

The commission agrees with this comment; however, no changes to the rules proposed here are necessary. Commission employees currently have the authority to enter and inspect facilities as needed to exercise their enforcement authority under THSC, §361.032. Authority to inspect a facility’s records is addressed in the concurrent rulemaking adopted in §328.5 (Rule Log Number 2001-081-328-WS).

TWS commented that the consideration of the proposed rules in §330.4 (Rule Log Number 2001-082-330-WS) should be postponed to coincide with the consideration of the proposed rules under Rule Log Number 2001-081-328-WS. TWS also commented that §330.4(f) could not be addressed in comment without discussing the definition of “incidental amounts of non-recyclable waste,” and offered comments suggesting changes to the definition.

The commission disagrees with these comments. Discussion of the definition of “Incidental amounts of non-recyclable waste” was provided in the preamble of the Rule Log Number 2001-082-330-WS proposal. Both rulemakings were heard at the August 7, 2002 commission agenda and were adopted at the August 21, 2002 commission agenda. Comments submitted by TWS relating to the Rule Log Number 2001-081-328-WS proposal were responded to in the Response to Comments section of the Rule Log Number 2001-081-328-WS adoption preamble.

Closed Landfill Facilities:

Lone Star Chapter Solid Waste Association of North America and TWS commented that §330.4(x) should not apply to Type V facilities.

The commission agrees with this comment. Section 330.4(x) as proposed and adopted will not apply to Type V facilities; therefore, no changes have been made in response to this comment.

Lone Star Chapter Solid Waste Association of North America and Texas Disposal Systems commented that the provision in §330.4(x) excluding landfills that receive an approved Subtitle D permit modification before September 1, 2001 should be clarified or deleted.

THSC, §361.120(d) exempts any municipal solid waste landfill facility from the closed landfill requirements if the facility received an approved permit modification as of the section’s effective date. However, §361.120(d) does not specify what type of permit modification a facility must receive to qualify for the exemption. This section could be interpreted to exempt any facility that

had received any type of permit modification allowed by 30 TAC §305.70. The commission does not believe that it was the intent of the legislature to provide such a broad exemption from the requirements of THSC, §361.120. Therefore, the commission has clarified in the rule as proposed and adopted that a facility must have received an approved Subtitle D permit modification to qualify for the exemption. The commission has made no change to the rule as a result of this comment.

Texas Chapter National Solid Wastes Management Association and Texas Disposal Systems commented that §330.4(x) relating to the reopening of closed landfills should be adopted exactly as written in THSC, §361.120.

As stated in the response to the previous comment, the exact language as written in THSC, §361.120 could be interpreted to provide an overly broad exemption from the new closed landfill requirements. As a result, the commission has clarified in the rule that a facility had to receive a Subtitle D permit modification by September 1, 2001 to be exempt from the requirements of THSC, §361.120. The commission believes that the clarification is necessary to implement the intent of the legislation. However, to follow the statutory language more closely as recommended by the commenter, “and the implementing Texas state regulations” has been added for a permittee to demonstrate compliance with all applicable current requirements.

TWS commented that §330.4(x) should specify that the facility to be reopened is required to make the same compliance demonstrations that an applicant for a new landfill would have to make in order to obtain a permit.

The commission disagrees with this comment. Adopted §330.4(x) requires landfills to comply with all applicable federal, state, and local requirements, which may not be the same as those applicable to an applicant for a new landfill permit. No change has been made to the rule as a result of this comment.

Animal Burial:

Texas Chapter National Solid Wastes Management Association and Texas Disposal Systems commented that §330.4(y) relating to the disposal of animal remains by a veterinarian in the first and second sentences should be changed to read “a permit or registration is not required for the disposal of animal remains from an animal that dies in the care of the veterinarian and does not include any other type of medical waste where all of the following occur:”.

The commission agrees with the intent of this suggested language. The rule has been changed in response to this comment.

Texas Chapter National Solid Wastes Management Association and Texas Disposal Systems commented that a new restriction number §330.4(y)(10) should also be included that the veterinarian is to be licensed to practice in the State of Texas to prevent out-of-state veterinarians from importing dead animals into Texas.

The commission agrees with this comment. HB 2912, §17.01 enacted the animal remains disposal exemption for veterinarians by adding §801.361 to the Texas Occupations Code. Texas Occupations Code, §801.002(6), defines a veterinarian as a person licensed by the State Board of Veterinary Medical Examiners to practice veterinary medicine. This definition of veterinarian applies throughout Chapter 801. As a result, a veterinarian must be licensed by the State Board of Veterinary Medical Examiners to dispose of animal remains under Texas Occupations Code, §801.361. The commission believes that adding a requirement to the rule that a veterinarian must be licensed by the State Board of Veterinary Medical Examiners is necessary to implement the intent of the legislature.

The rule has been changed in response to this comment by making two changes in the introductory sentence.

SUBCHAPTER A: GENERAL INFORMATION

§330.4

STATUTORY AUTHORITY

The amendment is adopted under the authority of HB 2912, §§9.03, 9.04, and 17.01, 77th Legislature, 2001, which direct the agency to: 1) ensure that solid waste processing facilities are not allowed to operate as unregulated recycling facilities; 2) require that a permittee obtain a permit amendment to reopen certain municipal waste facilities; and 3) allow certain veterinarians to dispose of animal remains by burying or burning if certain requirements are met. Additionally, the commission takes this action under the following relevant sections of Texas Water Code: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority to carry out its jurisdiction; and §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under this code and other laws of this state; and THSC, §361.011, which provides the commission all powers necessary and convenient to carry out its responsibilities concerning the regulation and management of municipal solid waste; and §361.024, which provides the commission authority to adopt and promulgate rules consistent with the general intent and purposes of THSC.

§330.4. Permit Required.

(a) No person may cause, suffer, allow, or permit any activity of storage, processing, removal, or disposal of any municipal solid waste unless such activity is authorized by a permit or other authorization from the Texas Water Commission, except as provided for in subsections (c) - (h) of this

section. Permits issued by the Texas Department of Health prior to the effective date of this chapter satisfy the requirements of this subsection. No person may commence physical construction of a new municipal solid waste management facility or a lateral expansion without first having submitted a permit application in accordance with §§330.50 - 330.65 of this title (relating to Permit Procedures) and received a permit from the commission, except as provided for specifically herein.

(b) In accordance with the requirements of subsection (a) of this section, no generator, transporter, owner or operator of a facility, or any other person may cause, suffer, allow, or permit wastes to be stored, processed, or disposed of at an unauthorized facility or in violation of a permit. In the event this requirement is violated, the executive director may seek recourse against not only the person who stored, processed, or disposed of the waste but also against the transporter, owner or operator, or other person who caused, suffered, allowed, or permitted its waste to be stored, processed, or disposed.

(c) A separate permit is not required for the storage or processing of municipal solid waste that is grease trap wastes, grit trap wastes, or septage that contains free liquids if the waste is treated/processed at a permitted municipal solid waste landfill. Any person who intends to conduct such activity under this subsection shall comply with the notification requirements of §330.8 of this title (relating to Notification Requirements).

(d) A permit is not required for a municipal solid waste transfer station facility that is used in the transfer of municipal solid waste to a solid waste processing or disposal facility from:

(1) a municipality with a population of less than 50,000;

(2) a county with a population of less than 85,000;

(3) a facility used in the transfer of municipal solid waste that transfers or will transfer 125 tons per day or less; or

(4) a transfer station located within the permitted boundaries of a municipal solid waste Type I, Type II, Type III, or Type IV facility as specified in §330.41 of this title (relating to Types of Municipal Solid Waste Facilities).

(e) A request for registration for sites or facilities exempted from permits under subsections (c) and (d) of this section shall be submitted in a format provided by the executive director and shall include all information requested thereon and any additional information considered necessary by the applicant or that may be requested by the executive director.

(f) Facilities must obtain a permit or registration as applicable under subsection (a), (d), or (q) of this section unless otherwise exempted under this chapter, or:

(1) the facility or site is used as:

(A) a citizens' collection station;

(B) a collection and processing point for only nonputrescible source-separated recyclable material, provided that the facility is in compliance with §§328.3 - 328.5 of this title (relating to General Requirements; Limitations on Storage of Recyclable Materials; and Reporting and Recordkeeping Requirements);

(C) a collection and processing point for mulching or composting of only source-separated recyclable material, provided that the facility is in compliance with Chapter 332 of this title (relating to Composting); or

(D) a collection point for 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

(2) the site is used for the disposal of soil, dirt, rock, sand, or 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.

(g) A permit amendment is not required to establish a waste-separation/recycling facility established in conjunction with a permitted municipal solid waste site, or composting facility at an existing permitted municipal solid waste site if owned by the permittee of the existing site. Facilities

exempted from a permit amendment under this subsection shall be registered with the executive director in accordance with §330.65 of this title (relating to Registration for Solid Waste Management Facilities). Failure to operate such registered facilities in accordance with the requirements established in §§330.150 - 330.159 of this title (relating to Operational Standards for Solid Waste Processing and Experimental Sites) may be grounds for the revocation of the registration.

(h) A permit is not required for a site or facility where the only operation is the storage and/or processing of used and scrap tires as provided for in §§330.801 - 330.889 of this title (relating to Management of Whole Used or Scrap Tires). Facilities exempted from a permit under this subsection shall be registered with the executive director in accordance with §330.53 of this title (relating to Technical Requirements of Part II of the Application). Failure to operate such registered facilities in accordance with the requirements established in §§330.801 - 330.889 of this title may be grounds for the revocation of the registration.

(i) A permit or registration under this chapter is not required for the operation of an approved treatment process unit (as provided in §330.1004(c)(1) of this title (relating to Generators of Medical Waste)) used only for the treatment of on-site (as defined in §330.1004(f) of this title) generated special waste from health care-related facilities.

(j) A separate permit is not required for a facility to treat petroleum-contaminated soil if the contaminated soil is treated/processed at a permitted solid waste landfill facility. The treated soil shall be disposed of at the facility or may be used as daily cover on the facility. Any person who intends to

conduct such activity under this subsection shall comply with the notification requirements of §330.8 of this title (relating to Notification Requirements).

(k) A licensed hospital may function as a medical waste collection and transfer facility for generators that generate less than 50 pounds of untreated medical waste per month and that transports its own waste if:

(1) the hospital is located in an incorporated area with a population of less than 25,000 and in a county with a population of less than one million; or

(2) the hospital is located in an unincorporated area that is not within the extraterritorial jurisdiction of a city with a population more than 25,000 or within a county with a population of more than one million. The hospital shall submit a request to the executive director for registration as a medical waste collection station.

(l) A permit is not required for an on-site medical waste incinerator used by a licensed hospital for incineration of only on-site generated medical wastes.

(m) Any change to a condition or term of an issued permit requires a permit amendment in accordance with §305.62 of this title (relating to Amendment) or a permit modification in accordance with §305.70 of this title (relating to Municipal Solid Waste Permit Modification). The owner or

operator shall submit an amendment or modification application in accordance with the requirements contained in §§330.50 - 330.65 of this title to address the items covered by the requested change.

(n) For energy and material recovery and gas recovery operations relating to municipal solid waste, a registration is required. A permit is not required for a municipal solid waste facility-Type IX that recovers gas for beneficial use. Those Type IX facilities that recover gas for beneficial use that are exempt from permitting under this subsection shall be registered with the executive director in accordance with §330.70 of this title (relating to Registration of Facilities That Recover Gas for Beneficial Use). However, exploratory and test operations for feasibility purposes may be conducted after approval of the operation by the executive director.

(o) Submission of a Soil and Liner Evaluation Report (SLER) and/or a Flexible Membrane Liner Evaluation Report (FMLER) required by §330.206 of this title (relating to Soil and Liner Evaluation Report and Flexible Membrane Liner Evaluation Report) for a liner design which meets all design and operational requirements of §§330.50 - 330.65 of this title and §§330.200 - 330.206 of this title (relating to Groundwater Protection Design and Operation) shall not require a permit amendment or modification.

(p) A permit or registration is not required for the drying of grit trap waste at a car wash facility as long as these wastes are disposed of in compliance with applicable federal, state, and local regulations. Grit trap waste from car wash facilities may be transported for drying purposes to another car wash facility if the facilities have the same owner and if the facilities are located within 50 miles of

each other. This subsection is not intended to preempt or supersede local government regulation of grit trap waste-drying facilities. Drying facilities must comply with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) if applicable.

(q) In addition to permit exemptions established in subsection (d) of this section, a permit is not required for any new municipal solid waste Type V transfer station that includes a material recovery operation that meets all of the requirements established by this subsection. Owners and operators of Type V transfer facilities meeting the requirements of this subsection are allowed to register their operations in lieu of permitting them. Owners and operators of transfer stations that meet the permit exemption requirements and wish to exercise the exemption option must register their operation in accordance with §330.65 of this title (relating to Registration for Solid Waste Management Facilities).

(1) Materials recovery. The transfer facility must recover 10% or more by weight or weight equivalent of the total incoming waste stream for reuse or recycling. The applicant must demonstrate in the registration application the method that will be used to assure the 10% requirement is achieved. The effective date of this subsection is February 2, 1995.

(2) Distance to a landfill. The transfer facility must demonstrate in the registration application that it will transfer the remaining nonrecyclable waste to a landfill not more than 50 miles from the facility.

(3) Exempt facilities. Transfer facilities exempted from a permit under this subsection shall register with the executive director in accordance with §330.65 of this title and meet the additional design criteria of §330.65(f) of this title.

(4) Revocation. Failure to operate such registered facilities in accordance with the requirements established in Subchapter G of this chapter (relating to Operational Standards for Solid Waste Processing and Experimental Sites) may be grounds for revocation of the registration.

(r) A permit is not required for a municipal solid waste transfer station that is used only in the transfer of grease trap waste, grit trap waste, septage, or other similar liquid waste if the facility used in the transfer will receive 32,000 gallons per day or less. Liquid waste transfer stations that will receive 32,000 gallons a day or less may operate if they notify the Executive Director 30 days prior to initiating operations and if the facility is designed and operated in accordance with the requirements of §330.66 of this title (relating to Liquid Waste Transfer Facility Design and Operation). Facilities that will receive over 32,000 gallons per day must apply for a permit.

(s) A permit is not required for a municipal solid waste Type V processing facility that processes only grease trap waste, grit trap waste, or septage or a combination of these three liquid wastes if:

(1) the facility can attain a 10% recovery of material for beneficial use from the incoming waste. Recovery of material for beneficial use is considered to be the recovery of fats, oils, greases and the recovery of food solids for composting, but does not include the recovery of water;

(2) the Type V processing facility is located within the permit boundaries of a commission permitted Type I landfill; or

(3) the Type V processing facility is located at a manned treatment facility permitted under the Texas Water Code, Chapter 26 and which is permitted to discharge at least 1 million gallons per day and which is owned by and operated for the benefit of a political subdivision of this state. Facilities meeting any of these exemptions must obtain a registration by meeting the operational criteria and design criteria established in §330.71 of this title (relating to Registration for Municipal Solid Waste Facilities That Process Grease Trap Waste, Grit Trap Waste, or Septage).

(t) A registration is required for a mobile liquid waste processing facility that processes grease trap waste, grit trap waste, or septage or a combination of these three liquid wastes. Mobile liquid waste processing facilities must obtain a registration by meeting the operational criteria and design criteria established in §330.72 of this title (relating to Registration of Mobile Liquid Waste Processing Units).

(u) A permit is not required for a municipal solid waste Type VI facility that demonstrates new management methods for processing or handling grease trap waste, grit trap waste, or septage or a

combination of these three liquid wastes. Those facilities meeting this exemption must obtain a registration by meeting the operational criteria and design criteria established in §330.73 of this title (relating to Registration of Demonstration Projects for Liquid Waste Processing Facilities).

(v) A permit, registration, or other authorization is not required for the disposal of litter or other solid waste, generated by an individual, on that individual's own land where:

- (1) the litter or waste is generated on land the individual owns;
- (2) the litter or waste is not generated as a result of an activity related to a commercial purpose;
- (3) the disposal occurs on land the individual owns;
- (4) the disposal is not for a commercial purpose;
- (5) the waste disposed of is not hazardous waste or industrial waste;
- (6) the volume of waste disposed of by the individual does not exceed 2,000 pounds per year;

(7) the waste disposal method complies with §§111.201 - 111.221 of this title (relating to Outdoor Burning);

(8) the waste disposal method does not contribute to a nuisance and does not endanger the public health or the environment. Exceeding 2,000 pounds per individual's residence per year is considered to be a nuisance; and

(9) the individual complies with the deed recordation and notification requirements in §330.7 of this title (relating to Deed Recordation) and §330.8 of this title.

(w) A permit or registration is not required for the disposal of animal carcasses from government roadway maintenance where:

(1) either of the following:

(A) the animals were killed on county or municipal roadways and the carcasses are buried on property owned by the entity that is responsible for road maintenance; or

(B) the animals were killed on state highway right-of-way and the carcasses are disposed of by the Texas Department of Transportation by burying the carcasses on state highway right-of-way; and

(2) the waste disposal method does not contribute to a nuisance and does not endanger the public health or the environment; and

(3) the animal carcasses are covered with at least two feet of soil within 24 hours of collection in accordance with §330.136(b)(2) of this title (relating to Disposal of Special Wastes).

(x) A major permit amendment, as defined by §305.62 of this title (relating to Amendment), is required to reopen a Type I, Type I-AE, Type IV, or Type IV-AE municipal solid waste facility permitted by the commission or any of its predecessor or successor agencies that has either stopped accepting waste, or only accepted waste in accordance with an emergency authorization, for a period of five years or longer. The municipal solid waste facilities covered by this subsection may not be reopened to accept waste again unless the permittee demonstrates compliance with all applicable current state, federal, and local requirements, including the requirements of Subtitle D of the federal Resource Conservation and Recovery Act of 1976 (42 United States Code, §§6901 et seq.) and the implementing Texas state regulations. If a municipal solid waste facility was subject to a contract of sale on January 1, 2001, the scope of any public hearing held on the permit amendment required by this subsection is limited to land use compatibility, as provided by §330.51(a) of this title (relating to Permit Application for Municipal Solid Waste Facilities) and §330.61 of this title (relating to Land-Use Public Hearing). This subsection does not apply to any municipal solid waste facility that has received a permit but never received waste, or that received an approved Subtitle D permit modification before September 1, 2001.

(y) A permit or registration is not required for disposal of the remains from an animal that dies in the care of a veterinarian licensed by the Texas State Board of Veterinary Medical Examiners where all of the following occur:

- (1) the veterinarian disposes of the remains of an animal and the remains do not include any other type of medical waste;
- (2) the veterinarian does not charge for the disposal;
- (3) the disposal is on property owned by the veterinarian;
- (4) the disposal occurs in a county with a population of less than 10,000;
- (5) the waste disposal does not contribute to a nuisance and does not endanger the public health or the environment;
- (6) the veterinarian complies with the deed recordation and notification requirements in §330.7 and §330.8 of this title;
- (7) the animal carcasses are covered with at least two feet of soil within 24 hours of disposal in accordance with §330.136(b)(2) of this title;

(8) uncontrolled access is prevented; and

(9) the disposal complies with §111.209 of this title (relating to Exceptions for Disposal Fires).