

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the amendment to §330.4, Permit Required; and new §330.75, Animal Crematory Facility Design and Operational Requirements for Permitting by Rule, *with changes* to the proposed text as published in the October 18, 2002 issue of the *Texas Register* (27 TexReg 9695).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

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 adopted rulemaking combines two separate solid waste provisions that require an amendment to §330.4. The rule subjects are animal crematories and pet cemeteries.

The purpose of the first part of the adopted rulemaking is to state the commission position on permit requirements regarding the management of municipal solid waste (MSW) for animal crematories.

Under Texas Health and Safety Code (THSC), §361.003(20), Definitions, dead animals are included in the definition of MSW. Section 330.4 prohibits the storage, processing, removal, or disposal of MSW unless such activity is authorized by a permit or other authorization. The adopted rulemaking provides authorization via a permit by rule for small animal crematories. The requirement to obtain a full MSW permit could be overly burdensome for small facilities, and the authorization level is set at a lower authorization tier if certain conditions are met. The amount and type of waste authorized to be processed at these facilities pose less risk which justifies providing for a lower authorization level than a full MSW permit. The limits on storage and incineration are adopted to minimize the likelihood that

nuisance conditions will occur at these facilities. Small animal crematories are authorized to operate via a permit by rule if they meet certain conditions. In addition to the MSW permit by rule conditions, these facilities must also comply with all applicable air quality rules and obtain appropriate air quality permits. Thus, all animal crematories must be authorized in accordance with the new source review (NSR) permitting requirements in 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, or qualify for a permit by rule under 30 TAC §106.494, Pathological Waste Incinerators, prior to construction or modification.

The purpose of the second part of the adopted rulemaking is to state the commission position on permit requirements for pet cemeteries. Pet cemeteries do not need to be regulated as landfills, although the prior rules could be interpreted as requiring permits for these facilities. Pet cemeteries pose less risk both because of the amount and type of waste disposed of and the spatial distribution of the burials. Although dead animals are MSW, which generally requires an authorization under §330.4(a) for disposal, the adopted rulemaking states that pet cemeteries do not require MSW authorizations and must only comply with timely burial, cover, and deed recordation requirements.

SECTION BY SECTION DISCUSSION

Section 330.4 is amended by making revisions in some existing subsections and by adding two new subsections. The name of the commission and citations are updated where needed throughout the section. The revision made to correct the commission's name is not intended to affect whether separate authorizations are required for activities regulated under other programs regulated by the commission. Grammatical and formatting revisions are made where needed throughout the section, and the acronym

“MSW” is substituted for the term “municipal solid waste” throughout the section for brevity. In §330.4(a), the list of subsections is deleted because all exclusions in the section apply and offset the prohibition against disposing of, processing, storing, or removing MSW without an authorization from the commission. Moreover, not including a list will avoid the necessity for updates created by any addition of more exclusions through future rulemaking. In §330.4(c), a change that was not included in the proposal is made to specify that the exclusion from separate permitting for processing certain liquid wastes only applies to Type I MSW landfill facilities, in order to be consistent with United States Environmental Protection Agency requirements on this issue. In §330.4(h), citations are updated which were not proposed for correction in the proposal. New §330.4(z) grants an MSW permit by rule for animal crematory facilities that meet certain requirements. New §330.4(aa) states that an MSW authorization is not required for pet cemeteries, although timely burial, deed recordation, and cover requirements apply. Deed recordation is needed to ensure that possible new owners of the property are aware that numerous animal burials have occurred. Timely burial requirements are needed to prevent nuisance conditions and health hazards from decomposing carcasses. The two-foot cover for burials is consistent with other animal burial requirements in Chapter 330 and provides protection against possible nuisance conditions and health impacts that could arise if burials are not done properly.

New §330.75 adopts the requirements which must be met to operate an animal crematory under an MSW permit by rule. In §330.75(a)(2), the prohibition in the permit by rule criteria against an animal crematory facility discharging wastewater to a septic system is changed in this adoption to allow discharges that have been properly authorized by the commission. In §330.75(b), the title of the subsection is revised from “Facility size or capacity” to “Incineration limits” because several proposed

provisions were eliminated in response to comments, as discussed in the RESPONSE TO COMMENTS section of this preamble. In §330.75(b)(1) and (5), the terms “incinerating” or “incinerated” are substituted for the terms “processing” or “processed” to provide that the limits on facility size are related to the amounts of carcasses that are cremated rather than the amounts that are received or otherwise handled at the facility on any given day. In §330.75(b)(5), the time allowed for cremating or moving a carcass to a freezer after its receipt is increased from one-hour to two hours to provide more flexibility to crematory facilities. This time period was selected because it is short enough to minimize the potential for decomposition of the carcasses and resulting nuisances. In §330.75(c), the title of the subsection is revised from “Records” to “Records management” because new §330.75(b)(12), added in response to a comment, relates to information that must be documented. Other revisions based on public comments received are adopted and are discussed in the RESPONSE TO COMMENTS section of this preamble. Other requirements in §330.75 are included to protect human health and the environment and/or to ensure that facilities subject to the rule are not operated in a manner that causes a nuisance.

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, and it does not meet any of the four applicability requirements listed in §2001.0225(a). A “major environmental rule” is 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.

The adopted rulemaking provides the MSW regulatory scheme regarding animal crematories and pet cemeteries. Whereas the prior rules subjected animal crematories to full permitting requirements as Type V MSW processing facilities, the adopted rules authorize smaller facilities via a permit by rule, a less formal authorization process which still provides substantive protection of public health and the environment. The adopted framework for regulating animal crematories is specifically tailored to provide the appropriate level of regulation while avoiding excessive burdens on the facilities. The adopted rules also state that pet cemeteries are not subject to MSW permitting requirements. This adopted rulemaking does not change air permitting requirements. Animal crematories are still subject to the NSR permitting requirements in Chapter 116 or Chapter 106.

This rulemaking is not a major environmental rule because it is not anticipated to affect adversely 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. The rulemaking applies only to a limited group of facilities and provides regulations which are protective of human health and the environment.

As to the four applicability requirements, the rulemaking does not exceed a standard set by federal law; exceed an express requirement of state law; exceed a requirement of any delegation agreement or

contract between the state, the commission, and an agency or representative of the federal government; nor are the rules adopted solely under the general powers of the commission.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for this rulemaking under Texas Government Code, §2007.043. The purpose of the animal crematory adopted rulemaking is to state the commission's position on permit requirements for animal crematories regarding the management of MSW. Under THSC, §361.003(20), dead animals are included in the definition of MSW. Section 330.4 prohibits the storage, processing, removal, or disposal of MSW unless such activity is exempted or authorized by a permit or other authorization. The adopted rules provide authorization via an MSW permit by rule for small animal crematories. The requirement to obtain an MSW permit could be overly burdensome for small animal crematory facilities. The authorization level for small animal crematory facilities should be a lower authorization tier than that of a full MSW permit. Animal crematories are still subject to the NSR permitting requirements in Chapter 116 or Chapter 106.

The purpose of the pet cemetery rulemaking is to state that no MSW permit or registration is required for pet cemeteries. Under THSC, §361.003(20), dead animals are included in the definition of MSW. Section 330.4 prohibits the storage, processing, removal, or disposal of MSW unless such activity is exempted or authorized by a permit or other authorization. The adopted rule clearly states that pet cemeteries are exempt from all MSW authorization requirements, although other requirements apply.

The rulemaking will substantially advance the stated purposes by providing specific provisions on these matters. Promulgation and enforcement of the rules will not burden or affect private real property. Promulgation and enforcement of these adopted rules are neither a statutory nor a constitutional taking of private real property. In addition, because the subject adopted rules are less stringent than the existing rules, they do not burden, restrict, or limit an owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The adopted rules do not prohibit the activities involved, but rather provide the regulatory requirements and certain compliance alternatives. Therefore, these rules will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that it is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), Actions and Rules Subject to the Texas Coastal Management Program, since this rulemaking affects provisions for certain permits that could be issued by the commission. The Coastal Coordination Act requires that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. The commission determined that the adopted rules are in accordance with 31 TAC §505.22, and found that the adopted rulemaking is consistent with the applicable CMP goals and policies.

The goals of the CMP are: to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas; to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal

zone; to ensure and enhance planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone; and to balance these competing interests. The policies of the CMP in 31 TAC §501.14 implement these goals.

The specific CMP policies applicable to these adopted rules require that rules governing permits shall require systems that are permitted by the commission to be located, designed, and operated to prevent release of pollutants that may adversely affect coastal waters. Promulgation and enforcement of these rules will not violate any standards identified in the applicable CMP policies because the standards specified in the rules address MSW authorization requirements only for pet cemeteries and small animal crematories, which will not have any significant impact on coastal waters because of the nature and small size of these facilities. The specific policies that govern permit conditions for facilities handling MSW are in §501.14(d) and apply to landfills.

PUBLIC COMMENT

A public hearing on this proposal was held in Austin on November 4, 2002, and oral comments were received from Toothacres Pet Cemetery Services, LP (Toothacres). The public comment period ended at 5:00 p.m. on November 18, 2002. Written comments were submitted by Harris County Public Health and Environmental Services, Pollution Control Division (Harris County) and by McPherson and Associates, P.C. (McTexLaw) on behalf of Toothacres. Harris County supported the rules and provided specific comments. Toothacres and McTexLaw did not indicate whether they were for or against the adoption of the rules, but provided specific comments.

RESPONSE TO COMMENTS

Related to the SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT section of the proposal preamble, McTexLaw commented that the proposed rules contain adverse fiscal implications for small businesses because of several factors. McTexLaw stated that the proposed rules would eliminate medium-sized crematory facilities since small facilities could operate under the new permit by rule, large facilities could afford a full permit, but medium-sized facilities could do neither. A cost of \$100,000 for a MSW permit was cited in the comment. McTexLaw commented that the rules would limit the growth of small facilities because of the cost for an MSW permit. McTexLaw further commented that the effective limits on volume that would be caused by the rules would artificially decrease gross revenues and increase operating costs, devastating profitability of these small businesses.

RESPONSE

The TCEQ disagrees that the proposed rules would eliminate medium-sized crematory facilities. The requirement for a full MSW permit currently applies to all animal crematory facilities that are not specifically excluded in the rules. Therefore, the revisions do not increase the burden on any of these facilities, but reduce the burden on facilities that meet the conditions for a permit by rule. The TCEQ does not disagree with the comment that a full MSW permit may cost \$100,000, but there is significant variation in the costs for specific permits. Costs have been reported to range from \$30,000 and up depending on the complexity of the application, whether it is contested, and other factors. The TCEQ believes that the cost of permitting is not overly burdensome for most medium-sized facilities. Additionally, since the option to operate under a permit by rule is intended for facilities that present less potential for environmental harm, it is

appropriate that the use of this option be limited to smaller facilities. This limit on applicability is similar to what exists in §106.494 for air permits by rule for these same facilities.

McTexLaw commented on the LOCAL EMPLOYMENT IMPACT STATEMENT section of the proposal preamble, that it is important to note that the rules would artificially reduce employment in the animal crematory industry to levels less than market demand because of three factors. McTexLaw stated that the rulemaking artificially suppresses market demand for these services to no more than 200 pounds per hour for eight hours per day. McTexLaw stated that there would be no need to employ more staff at a facility once they can provide service at these limits. McTexLaw further stated that the rules increase the costs for each employee incurred by a crematory facility. McTexLaw commented that these factors would cause the rules to negatively impact local employment.

RESPONSE

The TCEQ disagrees with these comments, but does not disagree that the rules may have an impact at some facilities. The rules do not change the requirement for facilities to obtain MSW permits, other than to allow permits by rule for some smaller crematories. Allowing the permits by rule option may have a positive impact on employment since it may now be economically feasible for some facilities to operate which could not afford to operate with a full permit. The proposed rules have also been revised in response to comments to allow for increased operating hours and to change the incineration limit from 200 pound per hour to 1,600 pounds per day.

McTexLaw commented on issues related to the REGULATORY IMPACT ANALYSIS

DETERMINATION section of the proposal preamble. McTexLaw commented that the restrictions on the hours of operation and pounds per hour for cremating carcasses would significantly increase operating costs for each crematory facility, resulting in greatly increased costs to consumers.

McTexLaw commented that the weight limit for carcasses received at crematories would deprive the public of obtaining the needed service of cremating larger animals and that the limit would be exceeded by several breeds of dogs and other types of animals. McTexLaw commented that factors making cremations more expensive or inconvenient may cause owners to dispose of carcasses in environmentally hazardous ways.

RESPONSE

The TCEQ agrees with some of these comments, but disagrees with others. The rules do not change the standards for facilities that require MSW permits. For facilities operating under a permit by rule, the TCEQ agrees that the rule should be changed to allow operations consistent with the operating hours for all MSW facilities under §330.118, concerning Hours of Operation.

The revision made in response to this comment is discussed in the response to another comment on this issue. The rule has also been revised to change the hourly cremation limits and to change the size limits for carcasses, as discussed further. The rulemaking does not add additional requirements or expenses for animal cremations, but rather allows small facilities to operate under reduced regulation at lower cost. The rulemaking also does not change any of the other disposal options for carcasses that are currently allowed, such as pet cemeteries, landfills, and rights of landowners under §330.4(v).

McTexLaw commented that §330.4(a) should be revised to read as follows: “No person may cause, suffer, allow, permit, or engage in any activity of receiving, storing, delivering, possessing, transferring, transporting, processing, removing, or disposing of any municipal solid waste”

McTexLaw commented that adding “engage in” would clarify the all-inclusiveness of action covered by the rule, and that “receiving,” “delivering,” “possessing,” “transferring,” and “transporting” should be added for the same reason. McTexLaw further commented that similar revisions should be made in new §330.75(a).

RESPONSE

The TCEQ disagrees with these comments. The current language is interpreted to include engage in, receiving, possessing, and transferring, so that those suggested words would not result in substantive change to the rule. The TCEQ does not believe that delivering and transporting wastes should be limited in all cases, since this suggested change would prevent the public, veterinarians, and other unregistered transporters from delivering dead animals to either pet cemeteries or animal crematories. No change was made in response to these comments.

Harris County commented that additional language is needed in new §330.75(a)(1) to address the handling and proper disposal of absorbent materials that may be used to minimize or eliminate a discharge from a crematory facility.

RESPONSE

The TCEQ disagrees with this comment. The rule currently requires proper handling and disposal of MSWs from these facilities, which includes the mentioned wastes. No changes were made to the rule in response to this comment.

McTexLaw commented that new §330.75(b) should be worded as follows for clarity: “Permit by rule requirements. In order for an animal crematory facility to qualify for a permit by rule, such facility must meet the following requirements.”

RESPONSE

The TCEQ disagrees with this comment. The suggested language would not make any substantive change to the rule, but would increase the verbiage. No change was made to the rule in response to this comment.

Toothacres commented that the language in new §330.75(b)(1) limits a facility to cremating no more than 200 pounds of animal carcasses per hour of operation. Toothacres stated that, if the restriction applies to a whole facility, it artificially forces each facility to operate no more than one incinerator that was rated to process 200 pounds of animal carcasses per hour, which arbitrarily ignores natural economic market forces and the demand for animal cremation services required by Texas residents. Toothacres stated that the costs to set up cremation facilities are significant. Toothacres further commented that application of the rule to an entire facility would limit facilities to one incinerator unit to operate under the new permit by rule or would require that the facilities apply for a full MSW

permit. Toothacres stated that it had been quoted a cost of around \$100,000 for the professional services to obtain an MSW permit. Toothacres commented that there is no rational basis or need to limit facilities to cremating no more than 200 pounds of carcasses per hour since crematory units rated for higher burn rates must by rule be fitted with extremely expensive monitoring devices. Toothacres further commented that the current requirements that all crematory units obtain air permits from TCEQ and that the requirement for the units to have air opacity sensors is sufficient to address and protect the environmental quality issues. Toothacres summarized this comment with a statement that, at the very minimum, §330.75(b)(1) should be clarified to be a per incinerator unit limit, rather than a limit for an entire facility.

RESPONSE

The TCEQ disagrees with some of these comments and agrees with others. The TCEQ agrees that the limit on incineration rates should be revised, but believes that these limits should apply to the entire facility rather than individual incinerators. The TCEQ disagrees with the comment that air permits are sufficient in themselves to protect environmental quality, since Air and MSW authorizations focus on different environmental concerns. The limit of 200 pounds per hour was proposed to be consistent with the limit for the air permit by rule in §106.494. However, consistency with the incineration limit for the air permit by rule is not an overriding factor since incineration rates are not integrally connected to the purpose of the MSW permit by rule conditions. In response to this comment, the TCEQ has revised §330.75(b)(1) to limit incineration rates to 1,600 pounds of carcasses per day, rather than 200 pounds per hour, to provide flexibility for operations. However, this limit still applies to the entire facility.

Toothacres and McTexLaw commented that the limit of 200 pounds per carcass in §330.75(b)(1) is not needed and should be deleted or revised to the size an incinerator can hold. Toothacres stated that the limit on burn rates for crematories is sufficient environmental protection since burning a large animal has no more material negative effect on the environment than burning the same weight in smaller carcasses. Toothacres stated that the limit would effectively prevent owners of larger pets from using crematory services and that this would have a disproportionate effect in rural areas. McTexLaw commented that the burn rate limit should be revised from 200 pounds per hour to the combined maximum capacity of all crematory units at a facility. McTexLaw further commented that the limit on carcass weights should be changed to a prohibition on dismembering carcasses in order to have them fit in the crematorium.

RESPONSE

The TCEQ agrees with these comments in part. The TCEQ has revised §330.75(b)(1) to allow cremation of whatever size of carcasses can be handled by an individual incinerator without dismemberment, as was suggested by McTexLaw. A prohibition on dismembering carcasses is also added to the adopted rule. The rule was based on the TCEQ's understanding that some incinerators used by crematory facilities could not accommodate carcasses weighing more than 200 pounds, and the TCEQ sought to avoid the potential threats posed by dismemberment of large carcasses. The rule has also been revised to set limits on the amount of waste which can be incinerated and stored at a facility on a daily basis, rather than an hourly basis. Setting these types of limits is appropriate since the potential threats to human health and the environment increase with the increase in the amount of MSW processed, incinerated, and stored at the

facility. This revision provides greater operating flexibility to crematories while continuing to limit the permit by rule option to smaller facilities.

With regard to the provisions in new §330.75(b)(2) for ash control and disposal at authorized facilities, Harris County commented that the term “authorized facility” must be defined or otherwise detailed to mean only facilities authorized under Chapter 330 to dispose of MSW.

RESPONSE

The TCEQ disagrees with this comment. The plain meaning of “authorized facility” is limited to those facilities authorized by TCEQ to accept these types of wastes. No changes were made in response to this comment.

Toothacres commented that the ashes from animal cremations are a natural material and that no regulation should be placed on their disposal. Toothacres and McTexLaw commented that there is no scientific basis for new §330.75(b)(2) and that it should be deleted.

RESPONSE

TCEQ disagrees with this comment. Ash is a material that is specifically named in the definition of “municipal solid waste” in THSC, §361.001(20) and 30 TAC §330.2. Although MSW wastes are generally restricted to disposal at authorized facilities, the TCEQ provided additional options in this rule for the disposition of ashes by allowing the return of the ashes to the animal owner or internment at a pet cemetery. This flexibility is provided because the commission recognized that

some pet owners will desire to retain the ashes rather than disposing of them and that the minimal amounts which would be generated from a single cremation present less risk than large-scale disposal. Ashes that are not disposed of by returning to the animal owner or internment at a pet cemetery must be sent to a facility authorized by TCEQ to accept these types of wastes. The ashes can present hazards to human health and the environment by causing water pollution and, if the particles are small enough, inhalation hazards such that disposal of other than small amounts of this material does need to be regulated. The risk to water quality may result from plant nutrients that are present in these ashes (including potassium, phosphate, calcium, etc.) or from other leachable constituents that may be present in some cremations (including heavy metals, etc.). Wind dispersion of ash that is not stored properly can potentially cause nuisance conditions for neighboring properties. No changes were made in response to this comment.

Harris County commented that language should be added to new §330.75(b)(5) to require tagging of carcasses upon receipt with the date received and the weight of the carcass. Harris County stated that this information is necessary for adequate enforcement of the provisions concerning maximum storage amounts and duration.

RESPONSE

The TCEQ agrees with this comment in part. The use of tags would be important in tracking carcasses that are stored in refrigerators. Rather than requiring tagging of carcasses, which may be overly burdensome and could result in health hazards to inspectors who would have to physically inspect the storage units, the commission is instead eliminating the option for

refrigerated storage, requiring storage at or below 29 degrees Fahrenheit which corresponds to the freezing point of meat. Since carcasses will need to be cremated or frozen within a short time, there will be limited potential for decomposition which was the basis for proposing a limit on the time carcasses could be stored in refrigerators. This revision eliminates the need to track the duration of storage. New §330.75(b)(12), added in response to this comment, requires animal crematories that operate under the new permit by rule to document the weight, date, and time carcasses are received, as well as all other information needed to document compliance with this section. The new provision will also require crematories to document the time, date, and weight of carcasses cremated. Documenting weights and the times carcasses are received and cremated will enable inspectors to determine compliance with limits on the total storage amounts and cremation limits. The documentation of receipt and cremation could be based on the same information for those carcasses that are cremated upon receipt. This information must be maintained in the facility's records, as required in §330.75(c)(2). Requiring documentation in the files will allow inspectors to determine compliance by reviewing the information. Additionally, the title of §330.75(c) is revised to "Records management" to distinguish between these requirements and the requirements related to the content of records in new §330.75(b)(12).

McTexLaw commented that the limit in new §330.75(b)(5) on the amount of carcasses stored should be deleted and that facilities should be allowed to store carcasses up to the capacity of the freezers at the facility.

RESPONSE

The TCEQ disagrees with this comment. The provision for limited storage amounts was proposed to limit the option of a permit by rule to small crematories. Limits on storage amounts are also proposed because of the possibility of power failure at a facility, which may make both the freezers and incinerators inoperative. If unlimited amounts of carcasses were allowed, the potential for problems under such circumstances is greatly increased. Additionally, if a facility operator should cease operations without having disposed of carcasses, the costs for cleanup would be greatly increased if large quantities of carcasses are present. Since this rulemaking does not require financial assurance for site closure costs, it is appropriate to limit the amount of carcasses that may be stored on-site. No changes to the rule were made in response to this comment. However, to reflect the fact that a facility may have more than one incinerator, the rule was changed to make the storage limit the two-day capacity of all incinerators present, up to the cap of 3,200 pounds.

Toothacres commented that clarification is needed on whether the prohibition against crematories accepting waste from healthcare facilities in new §330.75(b)(6) applies to veterinary clinics and research centers. Toothacres stated that, at a minimum, this part should be more clearly and narrowly defined as “health care-related facilities.” McTexLaw commented that veterinary clinics and animal research centers should be specifically excluded from “health care related facilities” in the rule.

RESPONSE

The TCEQ disagrees with these comments. Special waste from health care-related facilities includes carcasses of animals that have been intentionally exposed to pathogens. The handling and disposal of such waste are covered under Chapter 330, Subchapter Y, Medical Waste Management. If carcasses meet the criteria to be special waste from health care-related facilities, disposal under those rules is required, regardless of the type of generating facility. Although TCEQ is not aware that any veterinary clinics would intentionally expose animals to pathogens, the regulation of these activities at such facilities is not within the commission's jurisdiction. The TCEQ is aware that some, but not all, research centers do engage in this type of research. No changes to the rule were made in response to these comments.

Toothacres and McTexLaw commented that the limit of eight hours per day for hours of operation in new §330.75(b)(11) is too restrictive and that the permissible hours should be increased. Toothacres stated that the limited hours would require facilities to operate their crematories unsafely since they would have an economic incentive not to follow the cool-down periods prescribed by crematory manufacturers after each burn. Toothacres further stated that burning frozen animals would further exacerbate this problem since cremations of frozen carcasses take longer. Toothacres further stated that human cremations are not banned at night and that Crawford Equipment, a leading manufacturer of animal crematory units, has stated that no other state bans cremations at night. Toothacres and McTexLaw commented that there is no reasonable basis to ban cremations at night since the units are required by TCEQ rules to have opacity sensors to monitor exhaust air continuously and automatically correct the cremation cycle when problems exist. Toothacres and McTexLaw commented that a

restriction on the hours for use of an expensive capital asset has tremendous negative effects on a facility's finances and profitability, which would limit the number of jobs that could be created and reduce the number of crematory facilities operating in Texas.

RESPONSE

The TCEQ agrees with these comments in part. The hours of operation for all MSW facilities are generally set in §330.118 as 7:00 a.m. to 7:00 p.m. The TCEQ agrees that animal crematory facilities authorized under the permit by rule should be allowed to operate between 7:00 a.m. and 7:00 p.m., but that operations should not be authorized beyond these hours. Operating hours should not be extended further because of the potential for negative impacts on the surrounding community from noise, traffic, and odors. These more limited hours are justified because the process for operating under a permit by rule does not provide an opportunity for public participation. The rule has been revised to more clearly show the permissible hours of operation. The rule is also revised to delete the limit of eight hours of operation per day. It is also important to note that the safe operation of the incinerators mentioned in the comments relates to employee safety rather than public health. Although these types of employee safety issues are under the authority of the federal Occupational Safety and Health Administration, the additional four hours would allow for additional cool-down periods for the incinerators. There is an error in the comments about opacity sensors being required to automatically adjust incinerator conditions - automatic adjustments are not required by air permitting rules, although some units are equipped to do so. Incinerators operating at night are required to have opacity sensors, but not necessarily automated adjustments.

Harris County commented that language should be added to new §330.75(c)(4) to require that records at crematory facilities also be made available upon request to personnel from any local pollution control agency having jurisdiction.

RESPONSE

The TCEQ agrees that local governments should have the authority to inspect the records at these facilities, and §330.75(c)(4) has been revised to specify the records must be available to these entities. The jurisdiction of local governments to enter MSW facilities is addressed by the legislature in THSC, §361.032. Section 361.032(b) provides that agents or employees of the commission or local governments have the right to enter at any reasonable time public or private property in the governmental entity's jurisdiction, including a municipality's extraterritorial jurisdiction, to inspect and investigate conditions concerning solid waste management and control. Local governments are defined in THSC, Chapter 361 to include counties.

Harris County commented that language is needed in new §330.75 to address non-routine operations or breakdown of equipment. Harris County stated that the added language should be similar to language relating to this issue in §330.151(b).

RESPONSE

The TCEQ agrees with this comment and has added new §330.75(b)(13), which makes these facilities subject to §330.151(b).

SUBCHAPTER A: GENERAL INFORMATION

§330.4

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state; THSC, §361.011, which provides the commission all powers necessary and convenient to carry out its responsibilities concerning the regulation and management of MSW; THSC, §361.024, which provides the commission the authority to adopt and promulgate rules consistent with the general intent and purposes of the THSC; and THSC, §361.061, which provides the commission the authority to require and issue permits authorizing and governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste under THSC, Chapter 361.

§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 (MSW) unless such activity is authorized by a permit or other authorization from the commission, except as provided for in 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 MSW 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 the following types of MSW: grease trap wastes; grit trap wastes; or septage that contains free liquids if the waste is treated/processed at a permitted Type I MSWLF. 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 an MSW transfer station facility that is used in the transfer of MSW 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 MSW that transfers or will transfer 125 tons per day or less; or

(4) a transfer station located within the permitted boundaries of an MSW 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 MSW site, or composting facility at an existing permitted MSW 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 Chapter 328 of this title (relating to Waste Minimization and Recycling). Facilities exempted from a permit under this subsection shall be registered with the executive director in accordance with Chapter 328 of this title. Failure to operate such registered facilities in accordance with the requirements established in Chapter 328 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.

(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 MSW, a registration is required. A permit is not required for an MSW 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 MSW 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.

(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 an MSW 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 an MSW 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 an MSW 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 MSW 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 MSW 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 an MSW 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 MSW 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).
- (z) A permit by rule is granted for an animal crematory that meets the requirements of §330.75 of this title (relating to Animal Crematory Facility Design and Operational Requirements for Permitting

by Rule). Facilities that do not meet all the requirements of §330.75 of this title require a permit under §330.51 of this title (relating to Permit Application for Municipal Solid Waste Facilities).

(aa) A permit or registration is not required for pet cemeteries. However, a person who intends to operate a pet cemetery shall comply with the requirements of §330.7 of this title and shall ensure that the animal carcasses are covered with at least two feet of soil within a time period that will prevent the generation of nuisance odors or health risks. A pet cemetery is a facility used only for the burial of domesticated animals kept as pets and service animals such as seeing-eye dogs. Animals raised for meat production or used only for animal husbandry are not pets.

SUBCHAPTER E: PERMIT PROCEDURES

§330.75

STATUTORY AUTHORITY

The new section is adopted under TWC, §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state; THSC, §361.011, which provides the commission all powers necessary and convenient to carry out its responsibilities concerning the regulation and management of MSW; THSC, §361.024, which provides the commission the authority to adopt and promulgate rules consistent with the general intent and purposes of the THSC; and THSC, §361.061, which provides the commission the authority to require and issue permits authorizing and governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste under THSC, Chapter 361.

§330.75. Animal Crematory Facility Design and Operational Requirements for Permitting by Rule.

(a) General prohibitions. A person may not store, process, or dispose of animal carcasses, nor operate an animal crematory facility in such a manner so as to cause:

(1) the discharge or imminent threat of discharge of solid waste into or adjacent to waters in the state without obtaining from the commission specific authorization for such discharge;

(2) a discharge to an on-site sewage facility (a septic system) unless the discharge is properly authorized by the commission;

(3) the creation of a nuisance; or

(4) endangerment of human health and welfare or the environment.

(b) Permit by rule requirements. To qualify for a permit by rule, the following requirements must be met.

(1) Incineration limits. Incineration of carcasses shall be limited to 1,600 pounds per day. The facility shall not accept animal carcasses that weigh more than the capacity of the largest incinerator at the facility and shall not dismember any carcasses during processing.

(2) Ash control. Ash disposal must be at an authorized facility unless the ash is returned to the animal owner or sent to a pet cemetery. Ash shall be stored in an enclosed container that will prevent release of the ash to the environment. There shall be no more than 2,000 pounds of ash stored at an animal crematory at any given time.

(3) Air pollution control. Air emissions from the facility shall not cause or contribute to a condition of air pollution as defined in Texas Clean Air Act, §382.003. All animal crematories, prior to construction or modification, must have an air permit issued under Chapter 116 of this title

(relating to Control of Air Pollution by Permits for New Construction or Modification), or qualify for a permit by rule under §106.494 of this title (relating to Pathological Waste Incinerators).

(4) Fire protection. The facility shall prepare, maintain, and follow a fire protection plan. This fire protection plan shall describe fire protection resources (a local fire department, fire hydrants, fire extinguishers, water tanks, water well, etc.), and employee training and safety procedures. The fire protection plan shall comply with local fire codes.

(5) Storage limits. Carcasses must be incinerated within two hours of receipt, unless stored at or below a temperature of 29 degrees Fahrenheit. Storage of carcasses shall be in a manner that minimizes the release of odors. Storage of carcasses shall be limited to the lesser of 3,200 pounds or the amount that can be incinerated at the maximum loading rate for the incinerators at the facility in a two-day period.

(6) Unauthorized waste. Only carcasses or animal parts, with any associated packaging, shall be processed. Carcasses shall not be accepted in packaging that includes any chlorinated plastics. Carcasses or animal parts that are either hazardous waste or special waste from health care-related facilities are prohibited.

(7) Cleaning. Storage and processing units must be properly cleaned on a routine basis to prevent odors and the breeding of flies.

(8) Nuisance prevention. The facility shall be designed and operated in a manner so as to prevent nuisance conditions, including, but not limited to, dust from ashes, disease vectors, odors, and liquids from spills, from being released from the property boundary of the authorized facility.

(9) Diseased animals. The facility shall be equipped with appropriate protective equipment and clothing for personnel handling diseased animals which may be received at the facility. Facility owners or operators must inform customers and local veterinarians of the need to identify diseased animals for the protection of personnel handling the animals.

(10) Buffer zone. Animal crematories, including unloading and storage areas, constructed after the effective date of these rules must be at least 50 feet from the property boundary of the facility.

(11) Operating hours. Crematories shall operate within the hours of 7:00 a.m. to 7:00 p.m.

(12) Documentation. Operators of animal crematories shall document the carcass weight, date, and time when carcasses are received and when carcasses are loaded into the incinerator. A separate entry in the records for loading into the incinerator is not required if a carcass is loaded within two hours of receipt. This information will be maintained in records on site.

(13) Breakdown. These facilities are subject to §330.151(b) of this title (relating to Overloading and Breakdown).

(c) Records management. Owners or operators of all facilities authorized under a permit by rule must retain records as follows:

(1) maintain a copy of all requirements of this section and of §330.4 of this title (relating to Permit Required) that apply to the facility;

(2) maintain records for the previous consecutive 12-month period containing sufficient information to demonstrate compliance with all requirements of this section;

(3) keep all required records at the facility site; and

(4) make the records available upon request to personnel from the commission or from local governments with jurisdiction over the facility.

(d) Fees. Animal crematory facilities authorized under this section are exempt from fee requirements of Subchapter P of this chapter.

(e) Other requirements. No other requirements under this chapter are applicable to a facility that meets all of the requirements of this section.