

The Texas Commission on Environmental Quality (commission) adopts an amendment to §330.4, Permit Required, *with changes* to the proposed text as published in the October 24, 2003 issue of the *Texas Register* (28 TexReg 9196).

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

The rulemaking is in response to a petition received on December 16, 2002 from the City of Houston requesting a permit exemption for transfer stations that also operate source-separation recycling programs. The petitioner requested that the rule be changed to state that a permit is not required for any municipal solid waste Type V transfer station that is owned by a local government that operates a source-separation recycling program or, as provided by the existing rule, includes a material recovery operation that meets all of the requirements established by this subsection. The requested revisions to the rule language were to delete the word “new” in the phrase “a permit is not required for any new municipal solid waste Type V transfer station that,” and to insert the following phrase describing an additional exemption: “either is owned by a local government that operates a source-separated recycling program or . . . .”

On February 5, 2003, the commission voted to initiate rulemaking and instructed the executive director to examine the issues in the petition, including whether to establish appropriate criteria for the exemption and whether to broaden the permit exemption beyond local governments.

Previous rules allowed municipal solid waste transfer facilities which recover 10% or more by weight or weight equivalent of the total incoming waste stream for reuse or recycling to obtain a registration in

lieu of a permit. The adopted rule will allow transfer facilities to deduct incoming waste that has already been reduced by 10% or more through recycling in calculating their qualification to obtain a registration in lieu of a permit. The adopted rule will also allow a transfer facility that is owned and/or operated by a person or persons who also operate(s) one or more source-separation recycling programs in the county where the transfer station is located to obtain a registration in lieu of a permit, if those source-separation recycling programs manage an amount of recyclable materials equal to 10% or more of the incoming waste stream to all transfer stations to which credit is being applied.

For example, under the previous rule, if a transfer facility received 50,000 tons annually of incoming waste from one source, then that transfer facility could only qualify for the permit exemption if the transfer facility could demonstrate that it recycled 10% or more (5,000 tons or more) at the transfer facility prior to transferring the waste to a landfill. Under the adopted rule, if a transfer facility receives 50,000 tons annually of incoming waste from two sources, 25,000 tons annually from each source, but one source, Source A, has a source-separation recycling program that recycles 10% or more (2,500 tons or more), then in order to qualify for the permit exemption, that transfer facility must only demonstrate that it recycles 10% or more (2,500 tons or more) of the amount of incoming waste from Source B prior to transferring the waste to a landfill. Alternatively, the same transfer facility would qualify for the permit exemption if the transfer facility owner and/or operator also owned and/or operated, in the same county, a source-separation recycling program or programs that recycled a total of at least 5,000 tons of material.

The commission determined the language contained in the petition, “either is owned by a local government that operates a source-separated recycling program or . . .” was not appropriate. The rule has been broadened, beyond the requested application to local governments, to allow any transfer facility meeting the criteria to qualify for this permit exemption. However, the rule applies the permit exemption only for a specific transfer facility location, not as a blanket exemption for owners or operators.

A registration does not have a contested case hearing requirement; however, a public meeting must be held for each application as required by Texas Health and Safety Code, §361.111, and the existing rules in 30 TAC §330.65(d)(3)(C). By allowing a registration in lieu of a permit, it could be more cost effective for transfer stations to operate, which could have the effect of increased recycling of municipal solid waste.

The adopted rule adds a new ongoing recordkeeping requirement in addition to the current annual reporting requirement.

#### SECTION DISCUSSION

Administrative and grammatical changes are adopted throughout the sections to be consistent with *Texas Register* requirements.

Section 330.4(e), Permit Required, adds a cross-reference to subsection (q), which is now applicable under this rulemaking. Subsection (e) also deletes the word “shall” and replaces it with the word

“must” to conform with the Texas Legislative Council Drafting Manual. “Shall” imposes a duty upon a person named in the sentence. “Must” imposes a precedent condition on a thing named in the sentence.

Section 330.4(q) deletes the word “new” to allow both new and existing transfer stations that meet all the requirements of this subsection to register their operations in lieu of obtaining a permit. This should result in increased recycling efforts of transfer stations by extending their recycling requirements beyond their application for registration, thereby, creating an ongoing performance-based requirement for permit exemption. This subsection deletes the language “that includes a material recovery operation” to allow a more flexible exemption for transfer stations. Subsection (q) is also amended for readability by combining two redundant sentences; deleting text to be consistent with *Texas Register* formatting requirements; deleting the word “must” and replacing it with the word “shall”; and adding a cross-reference that had been inadvertently omitted.

Subsection (q)(1) is amended to correct a catch line that is rendered inaccurate as a result of this rulemaking and is restructured from proposal by adding subparagraphs (A) and (B) and by restructuring the proposed paragraph (1)(A) and (B) as paragraph (2) for better readability. The subsequent paragraphs in subsection (q) are renumbered accordingly.

Restructured subsection (q)(1)(A) deletes the word “total” and adds the sentence, “Incoming waste that has already been reduced by at least 10% through a source-separation recycling program is not subject to this requirement and may be excluded from this calculation.” This relieves transfer facilities from

the burden of having to recover an additional 10% from source-reduced waste streams and provides an incentive for transfer facility operators to establish effective source-reduction programs. This amendment is consistent with Texas Health and Safety Code, §361.111(a)(4), which exempts from municipal solid waste permit requirements “a materials recovery facility that recycles for reuse more than 10% of its incoming *nonsegregated* waste stream if the remaining non-recyclable waste is transferred to a permitted landfill not more than 50 miles from the materials recovery facility.” Subparagraph (1)(A) also deletes the word “must” and replaces it with the word “shall”; removes an obsolete effective date; and corrects the tense of the subparagraph to conform to the new lead-in sentence.

Restructured subsection (q)(1)(B) adds language in response to comments to allow a transfer facility to qualify for the exemption if the transfer station is owned by a person who also operates one or more source-separation recycling programs in the county where the transfer station is located, if those recycling programs manage an amount of recyclable materials equal to 10% or more of the incoming waste stream to all transfer stations to which credit is being applied.

Restructured subsection (q)(2) outlines the documentation requirements needed by a transfer station to apply for and maintain the permit exemption. This complements the deletion of the word “new” in subsection (q) by creating an ongoing performance-based standard for this permit exemption.

The existing subsection (q)(2) is renumbered from proposal as subsection (q)(3).

The existing subsection (q)(3) is renumbered from proposal as (q)(4). Renumbered paragraph (4) deletes the word “shall” and replaces it with the word “must” and updates a cross-reference.

The existing subsection (q)(4) is renumbered from proposal as subsection (q)(5). Renumbered paragraph (5) deletes the word “such” for readability.

#### 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 rule is not subject to §2001.0225, because it does not meet the criteria for a “major environmental rule” as defined in that statute.

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.

The specific intent of the rule is to promote recycling and materials recovery at Type V transfer facilities by exercising commission discretion under Texas Health and Safety Code, §361.111, that would allow greater flexibility regarding the recycling activities that would qualify a transfer facility for an exemption from permit requirements. Therefore, it is not anticipated that the rule will 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 commission concludes that this rule does not meet the definition of major environmental rule.

Furthermore, even if the rule did meet the definition of a major environmental rule, the rule is not subject to Texas Government Code, §2001.0225, because it does not meet any of the four applicable requirements specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) 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; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the rule does not meet any of these requirements. First, there are no applicable federal standards that this rule would address. Second, the rule does not exceed an express requirement of state law because there is no expressly applicable state law. Third, there is no delegation agreement that would be exceeded by the rule. Fourth, the commission adopts this rule to allow greater flexibility regarding the recycling activities that would qualify a Type V transfer facility for an exemption from permit requirements under Texas Health and Safety Code, §361.111. This rule is also adopted under the authority of Texas Health and Safety Code, §361.011 and §361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act, and §361.022, which sets public policy in the management of municipal solid waste to

include reuse or recycling of waste. Therefore, the commission does not adopt the rule solely under the commission's general powers.

The commission invited public comment on the draft regulatory impact analysis determination. No comments were received on the draft regulatory impact analysis determination.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated this rule and performed an assessment of whether the rule constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the rule is to promote recycling and materials recovery at Type V transfer facilities by exercising commission discretion under Texas Health and Safety Code, §361.111 to allow greater flexibility regarding the recycling activities that would qualify facilities for an exemption from permit requirements. The rule would substantially advance this stated purpose by deleting the requirement that only new facilities may qualify for the exemption and allowing a facility to use the reduction in the incoming waste stream from a source-separation recycling program to count toward the exemption.

Promulgation and enforcement of this rule would be neither a statutory nor a constitutional taking of private real property because the rule does not affect real property. This rule exercises commission discretion by broadening the exemption from permit requirements for Type V transfer facilities.

There are no burdens imposed on private real property, and the benefits to society are increased recycling and extended life to existing landfills. In addition, because the rule increases the number of

facilities eligible for an exemption from permit requirements, the rule does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, this rule will not constitute a taking under the Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rule and found that it is identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council. The commission determined the rule concerns permit exemptions, which are administrative and procedural in nature; does not impact any CMP goals and policies; will have no substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the rule will not violate (exceed) any standards identified in the applicable CMP goals and policies. Therefore, this rule is consistent with CMP goals and policies.

The commission solicited comments on the consistency of the proposed rulemaking with the CMP during the public comment period. No comments were received on the consistency of the proposed rulemaking with the CMP.

## PUBLIC COMMENT

The proposed rules were published for comment in the October 24, 2003 issue of the *Texas Register* (28 TexReg 9196). A public hearing on this proposal was held in Austin on November 17, 2003 and the comment period closed on November 24, 2003. No person presented oral comments at the hearing. Comments were received from: City of Houston (COH); Dallas County Corporate Recycling Council (DCCRC); Harris County (HC); Texas Disposal Systems (TDS); and two individuals.

## RESPONSE TO COMMENTS

### Comment

TDS commented that it supported the rulemaking as proposed. HC also supported the commission's efforts to promote recycling.

### Response

**The commission appreciates these comments in support of the rulemaking.**

### Comment

DCCRC urged caution in the loosening of any standards or permitting requirements, specifically the removal of the contested case hearing opportunity by allowing registration in lieu of a permit. DCCRC also contended that 10% recovery was not high enough, and expressed opposition to rule changes that would further reduce this standard. HC also commented that new transfer stations should be subject to a contested case hearing.

## **Response**

**This rulemaking was initiated in response to a petition and not in accordance with new legislation. Therefore, the rule must remain within the legislative authority of the existing statute, Texas Health and Safety Code, §361.111, which allows a facility that recycles for reuse more than 10% of its incoming nonsegregated waste stream to obtain a registration in lieu of a permit. The criteria for a permit exemption in the rule remain within the parameters of the existing statute, but neither increase nor reduce the 10% waste reduction standard. As recommended, the commission has not reduced the 10% waste reduction standard.**

**The exemption from permitting requirements for a facility that meets the 10% standard, transfers the remaining waste to a permitted landfill not more than 50 miles away, complies with design and operation requirements established by the commission for registered facilities, and holds a public meeting on the siting of the facility is mandated by the statute. The commission has a statutory duty or obligation to grant these exemptions as an incentive for recycling, and included in that statutory exemption is removal of the opportunity to request a contested case hearing. There is still opportunity for public input on registrations in the form of comments taken at a public meeting that must be considered by the executive director before taking action on the application. No changes have been made to the rule in response to these comments.**

## **Comment**

**An individual expressed concern about verification of recycling rates to demonstrate compliance and enforcement with the 10% requirement.**

### **Response**

**The commission agrees that there will be an increase in recordkeeping by exempted facilities. For those facilities owned by the operator of a source-separation recycling program in the same county, the recordkeeping will be simple: the amount of source-separated recyclable material managed by the recycling program must equal 10% or more of the amount of incoming waste processed by all the transfer facilities seeking the exemption. For other transfer stations, the demonstration of compliance with the 10% requirement will be in the form of documents from the source or sources of the waste processed through the transfer facility. The commission intends to include in a guidance document the types of records that will satisfy this requirement. Acceptable documentation of a facility's exemption from permitting requirements under this rule will be similar to the requirements for recycling and composting operations, including signed and dated receipts for the sale of specified amounts of specific processed material(s) or signed and dated bills of lading or shipping manifests showing specific amounts of processed material(s) transferred to a specific site for recycling. No changes have been made to the rule in response to this comment.**

### **Comment**

COH offered additional rule language for transfer facilities owned by the operator of a source-separation recycling program in the county where the transfer facility was located.

**Response**

**The commission agrees with this comment as an alternate method for demonstrating compliance with the 10% requirement and has added a new subsection (q)(1)(B) in response to this comment.**

Comment

An individual commented on the possibility of a transfer facility exceeding the design capacity of the facility.

**Response**

**The operational standards for a solid waste processing facility in 30 TAC §330.151(a) require a transfer facility not to exceed its design capacity for processing solid waste during operation. A transfer facility seeking an exemption under this rule must register in accordance with §330.65 and must meet the additional design criteria of §330.65(f), which requires design standards that conform with §330.151. This is required by the introductory paragraph for subsection (q) and by renumbered paragraph (4) of subsection (q). A facility that exceeds its design capacity and accumulates waste must stop receiving additional solid waste until the accumulation is abated. No changes have been made to the rule in response to this comment.**

Comment

An individual questioned whether a registered transfer facility authorized to process a maximum of 125 tons per day would be allowed to process more than 125 tons per day under this exemption.

**Response**

**A registration for a facility used in the transfer of municipal solid waste that transfers 125 tons per day or less is allowed under §330.4(d). The exemption in §330.4(q) is separate from that exemption and would require a new application with a demonstration that the facility has an operational capacity to process the additional waste. No changes have been made to the rule in response to this comment.**

## **SUBCHAPTER A: GENERAL INFORMATION**

### **§330.4**

#### **STATUTORY AUTHORITY**

The amendment is adopted under Texas Health and Safety Code, §361.111, which authorizes the commission to exempt from permit requirements certain municipal solid waste management facilities that meet specific criteria; §361.022, which sets public policy in the management of municipal solid waste to include reuse or recycling of waste; §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction; and §361.024, which provides the commission with rulemaking authority.

#### **§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 Sites).

(e) A request for registration for sites or facilities exempted from permits under subsections (c), (d), and (q) of this section must be submitted in a format provided by the executive director and must 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 city-wide 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 and Registration Modifications). 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 Soils and Liner Evaluation Report (SLER) and Flexible Membrane Liner Evaluation Report (FMLER)) 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 MSW Type V transfer station that meets all of the requirements established by this subsection. Owners and operators of Type V transfer stations that meet the permit exemption requirements of this subsection and wish to exercise the exemption option shall register their operation in accordance with §330.60 of this title (relating to Technical Requirements of an Application for Registration of Solid Waste Facilities (Type V and Type VI)) and §330.65 of this title.

(1) Source-separated recycling/materials recovery. Owners and operators of Type V transfer facilities may register their operations in lieu of permitting them, provided:

(A) the transfer facility recovers 10% or more by weight or weight equivalent of the incoming waste stream for reuse or recycling. Incoming waste that has already been reduced by at least 10% through a source-separation recycling program is not subject to this requirement and may be excluded from this calculation. The applicant shall demonstrate in the registration application the method that will be used to assure the 10% requirement is achieved; or

(B) the transfer facility owner and/or operator also operate(s) one or more source-separation recycling programs in the county where the transfer station is located and those source-separation recycling programs manage a total weight or weight equivalent of recyclable materials equal to 10% or more by weight or weight equivalent of the incoming waste stream to all transfer stations to which credit is being applied.

(2) Documentation. After the transfer facility operations commence, documentation of recycling or recovery of 10% of waste material from the waste stream must be annually updated and maintained at the transfer facility for records inspection. Failure to maintain the standard of 10% recovery of materials shall be grounds for revocation of the registration.

(3) Distance to 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.

(4) Exempt facilities. Transfer facilities exempted from a permit under this subsection must register with the executive director in accordance with §330.60 and §330.65 of this title and meet the additional design criteria of §330.65(f) of this title.

(5) Revocation. Failure to operate 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. A separate permit or registration is required for the storage, transportation, or handling of used oil mixtures collected from oil/water separators. Any person who intends to conduct such activity shall comply with the regulatory requirements of Chapter 324 of this title (relating to Used Oil Standards).

(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 Texas Water Code, Chapter 26 and which is permitted to discharge at least one 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, 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 RCRA, Subtitle D 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 Exception 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.

(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.