

The Texas Commission on Environmental Quality (commission) proposes amendments to §§332.3, 332.8, 332.31, 332.37, 332.41, and 332.47.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

This rulemaking implements the requirements of House Bill 1791, 78th Legislature, 2003, which requires facilities that are composting grease trap waste to be permitted by the commission, where they are currently only required to be authorized by a registration. Existing operating facilities will be required to obtain a permit. Owners and operators for currently pending registration applications will be required to obtain a permit rather than a registration. All proposed sites will be required to apply for a permit. For existing facilities to continue operation, they must receive a permit from the commission on or before June 1, 2004.

SECTION BY SECTION DISCUSSION

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

Proposed new §332.3(a)(3), Applicability, adds operations that compost grease trap waste to the list of compost operations that are subject to permit requirements.

Proposed new §332.3(a)(3)(A) adds that proposed operations that compost grease trap waste in any amount are subject to permit requirements.

Proposed new §332.3(a)(3)(B) adds that existing operations already authorized through a registration to compost grease trap waste in any amount are subject to permit requirements. Also added is the time frame for existing operations to comply with permit requirements, and the time limit for existing operations to cease operations if they do not comply with the required permit requirements.

Proposed §332.3(b)(4) is deleted to remove operations that compost grease trap waste from the list of compost operations that are subject to registration requirements and subsequent paragraphs (5) - (7) have been renumbered.

Proposed §332.8(d)(2), Air Quality Requirements, deletes grease trap waste from the list of wastes subject to air quality requirements for facilities that are subject to registration requirements. These air quality requirements for grease trap waste are moved to the amended section for air quality requirements for facilities subject to permits.

Proposed §332.8(e)(2) adds grease trap waste to the list of wastes subject to air quality requirements for facilities that are subject to permit requirements.

Proposed §332.31(a)(4), Definition of and Requirements for Registered Facilities, is deleted to remove operations that compost grease trap waste from the list of operations that are subject to registration requirements and subsequent paragraphs (5) - (7) have been renumbered.

Proposed §332.37(2), Operational Requirements, deletes grease trap waste from the list of wastes subject to groundwater protection requirements for facilities that are subject to registration requirements. These groundwater protection requirements are moved to the amended section for groundwater protection requirements for facilities subject to permits. The paragraph also replaces the word “shall” with the word “must” as appropriate.

Proposed §332.41(a)(3), Definition, Requirements, and Application Processing for a Permit Facility, adds operations that compost grease trap waste to the list of compost operations that are subject to permit requirements.

Proposed §332.47, Permit Application Preparation, replaces the word “shall” with the word “must” or “will” as appropriate.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Analyst, Strategic Planning and Appropriations Section, has determined that, for the first five-year period the proposed rules are in effect, there will not be significant fiscal implications for the agency or other units of state and local government as a result of administration or enforcement of the proposed rules.

The proposed rules implement House Bill 1791, 78th Legislature, 2003, and require that facilities that compost grease trap waste be permitted by the commission. Currently, facilities that compost grease trap waste are authorized by the commission through registration.

Existing agency resources will be used to implement the proposed rules, and no significant fiscal implications are anticipated for the commission for any additional enforcement, inspection, permitting, or guidance activities. Revenue to the agency is not expected to be impacted as there is no permit application fee and solid waste disposal fee revenue is not expected to increase or decrease significantly from current levels.

At this time, there are three registered facilities that compost grease trap waste and two facilities have registration applications pending for composting grease trap waste. None of these facilities or proposed facilities are owned or operated by units of state or local government, and therefore, no fiscal implications are anticipated for units of state or local government to implement the proposed rules.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the enforcement of and compliance with the proposed rules will be compliance with state law and more effective regulation and control of municipal solid waste, particularly grease trap waste.

Fiscal implications are anticipated to businesses or individuals as a result of the implementation or enforcement of the proposed rules.

The proposed rules would require individuals or businesses who compost grease trap waste to obtain a permit rather than a registration from the agency. At this time, there are three registered facilities that

compost grease trap waste and two facilities have registration applications pending for composting grease trap waste. Under the proposed rules, existing facilities must receive a permit from the agency on or before June 1, 2004.

Costs to obtain a permit in lieu of a registration are anticipated to be considerably higher for affected facilities. There is a wide range of costs associated with obtaining a permit for this type of facility depending on size and location of the facility. Additional costs for preparing a permit application may be attributed primarily to professional services costs for the development and support of the permit application.

As part of the permit application, a geological report is required detailing characteristics of subsurface soils for the proposed site. This report will require soil samples to be obtained by boring into the area of the facility to determine the characteristics of the subsurface soils. The number and depth of these soil samples will depend on the acreage of a facility. It is estimated that samples will cost between \$1,000 - \$5,000 each, for every five acres. Larger facilities will require more samples and more time spent at the site and, therefore, have higher costs.

The proposed rules also require that certain documents, reports, and drawings in a permit application be prepared by a licensed engineer. The engineering requirements of the application may require a large number of work hours. Engineering and geological contract costs for a permit are estimated to be as high as \$250,000.

Fees for legal proceedings could be the most costly component of the permit application, and would vary widely depending upon the complexity and length of the permit application process. Whether a permit application is contested could have significant fiscal implications for a proposed facility. A contested case for a permit application may increase costs as much as \$500,000 over the costs for an uncontested permit application, although the costs could also be significantly less, depending upon the length and complexity of the permit application process. The location of a facility can impact the costs for a permit. If the facility is located where there is local opposition, the costs of a contested application are anticipated to be higher.

Agency program staff have estimated that current costs for a facility to obtain a registration may range from \$35,000 to \$250,000, depending upon the size and location of the proposed facility. Agency staff further estimate that the conversion to permits may increase costs to affected facilities up to \$750,000, depending upon any costs associated with a contested case hearing. Uncontested permit applications would be expected to cost considerably less, and depending upon the location and size of the facility, could be estimated to cost approximately \$250,000.

Additional costs to regulated facilities would be expected to be passed on to entities that use their services, generally restaurants or other facilities that have grease trap waste to be disposed of. At this time, there are approximately 20 landfills, 12 Type V grease and grit trap facilities, and 30 transfer stations in the state that are authorized to accept this type of waste. It is not known how the proposed rules and the resulting higher potential costs for facility authorization would affect competition between these entities, if at all.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications are anticipated as a result of implementation of the proposed rules for small or micro-businesses that own or operate grease trap composting facilities.

The proposed rules would require individuals or businesses who compost grease trap waste to obtain a permit rather than a registration from the agency. At this time, there are three registered facilities that compost grease trap waste and two facilities have registration applications pending for composting grease trap waste. Under the proposed rules, existing facilities must receive a permit from the agency on or before June 1, 2004. It is estimated that all five facilities are small or micro-businesses and that there will be significant costs to comply with the proposed rules.

Agency program staff have estimated that current costs for a facility to obtain a registration may range from \$35,000 to \$250,000, depending upon the size and location of the proposed facility. Agency staff further estimate that the proposed rules may increase costs to affected facilities by as much as \$750,000, depending upon any costs associated with a contested case hearing. A contested case for a permit application may increase costs as much as \$500,000 over the costs for an uncontested permit application, depending upon the length and complexity of the permit application process. Uncontested permit applications would be expected to cost considerably less, and depending upon the location and size of the facility, could be estimated to be approximately \$250,000.

The following is an analysis of the cost per employee for small or micro-businesses affected by the proposed rules. Small and micro-business are defined as having fewer than 100 or 20 employees

respectively. Owners of grease trap composting facilities with 100 or fewer employees could incur additional costs for obtaining a permit of up to \$750,000 to comply with the proposed rules. Costs for these facilities are estimated to be between \$250,000 and \$750,000 or between \$2,500 and \$7,500 per employee. A micro-business with 20 or less employees would incur estimated additional costs of between \$12,500 and \$37,500 per employee. The projected costs for affected facilities is the same for small businesses as for larger businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rules are not subject to §2001.0225 because they do 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 proposed rules is to more closely regulate the commercial composting of grease trap waste to improve environmental protection. It is estimated that only three existing and two proposed facilities will be affected by these proposed rules. Therefore, it is not anticipated that the proposed rules 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 these proposed rules do not meet the definition of a major environmental rule.

Furthermore, even if the proposed rules did meet the definition of a major environmental rule, the proposed rules are not subject to Texas Government Code, §2001.0225, because they do 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 proposed rules do not meet any of these requirements. First, there are no applicable federal standards that these rules would address. Second, the proposed rules do not exceed an express requirement of state law but instead implement the statutory requirement for permitting grease trap composters. Third, there is no delegation agreement that would be exceeded by these proposed rules

because none relates to this subject matter area. Fourth, the commission proposes these rules under the rulemaking direction of House Bill 1791, 78th Legislature, 2003, amending Texas Health and Safety Code, §361.428, and not solely under the commission's general powers. The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary assessment of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rules is to more closely regulate the commercial composting of grease trap waste to improve environmental protection. The proposed rules would substantially advance this stated purpose by requiring that grease trap waste can only be composted at a permitted facility instead of a registered facility.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property because the proposed rules do not affect real property.

In particular there are no burdens imposed on private real property, and the proposed rules would improve the commission's ability to ensure proper management of grease trap waste composting operations. Because the regulation does not affect real property, it 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, these proposed rules will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found the rules are 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 these proposed rules for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council. The commission determined that the proposed rules concern requirements for a person commercially composting grease trap waste to obtain a permit instead of a registration, which is 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 proposed rules will not violate (exceed) any standards identified in the applicable CMP goals and policies. Therefore, these proposed rules are consistent with CMP goals and policies. The commission solicits comments on the consistency of the proposed rulemaking with the CMP during the public comment period.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All

comments should reference Rule Log Number 2003-045-332-WS. Comments must be received by 5:00 p.m., September 22, 2003. For further information or questions concerning this proposal, please contact Debi Dyer, Policy and Regulations Division, at (512) 239-3972.

SUBCHAPTER A: GENERAL INFORMATION

§332.3, §332.8

STATUTORY AUTHORITY

The amendments are proposed under Texas Health and Safety Code, §361.428, as amended by House Bill 1791, 78th Legislature, 2003, which prohibits the commercial composting of grease trap waste without a permit; §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; §361.061, which authorizes the commission to issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste under this chapter; and §361.024, which provides the commission with rulemaking authority.

The proposed amendments implement Texas Health and Safety Code, §361.428, as amended by House Bill 1791, 78th Legislature, 2003.

§332.3. Applicability.

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

Product Standards), and the air quality requirements in §332.8 of this title (relating to Air Quality Requirements). These operations [facilities] are required to obtain a permit from the commission under [pursuant to] Chapters 305 and 281 of this title (relating to Consolidated Permits; and Applications [and 281 of this title (relating to Application] Processing); [.]

(1) operations [Operations] that compost mixed municipal solid waste; [.]

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

(3) operations that compost grease trap waste.

(A) All proposed operations that compost any amount of grease trap waste must apply for a permit and must have a permit prior to operating.

(B) Existing facilities that have received a registration to authorize operations to compost any amount of grease trap waste must apply for a permit. Operating grease trap waste composting facilities authorized to operate by a registration may continue to operate if they file a timely permit application and receive a permit not later than June 1, 2004. Existing facilities that do not receive a permit on or before June 1, 2004, must discontinue operations not later than June 1, 2004.

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

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

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

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

[(4) Operations that compost grease trap waste.]

(4) [(5)] operations [Operations] that compost disposable diapers or paper products soiled by human excreta; [.]

(5) [(6)] operations [Operations] that compost the sludge byproduct generated from the production of paper if the executive director determines that the feedstock is appropriate under

[pursuant to] §332.33 of this title (relating to Required Forms, Applications, Reports, and Request to Use the Sludge Byproduct of Paper Production); and [.]

(6) [(7)] operations [Operations] that incorporate any of the materials set forth in paragraphs (1) - (5) [(6)] of this subsection with source-separated yard trimmings, clean wood material, vegetative material, paper, manure, meat, fish, dairy, oil, grease materials, or dead animal carcasses.

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

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

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

(d) Operations exempt from facility notification, registration, and permit requirements. The following operations are subject to the general requirements found in §332.4 of this title [(relating to General Requirements)], [and] the air quality requirements in §332.8 of this title [(relating to Air

Quality Requirements)], and are exempt from notification, registration, and permit requirements found in Subchapters B - D of this chapter [Subchapter B of this chapter (relating to Operations Requiring Notification), Subchapter C of this chapter (relating to Requirements for Registered Facilities), and Subchapter D of this chapter (relating to Permit Required)]. Operations under paragraphs (1) and (3) of this subsection are subject to the requirements of an exempt recycling facility under §328.4 and §328.5 of this title (relating to Limitations on Storage of Recyclable Materials; and Reporting and Recordkeeping Requirements); [.]

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

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

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

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

(3) mulching [Mulching] operations; [.]

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

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

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

§332.8. Air Quality Requirements.

(a) General requirements.

(1) Any composting or mulching operation which has existing authority under the Texas Clean Air Act does not have to meet the air quality criteria of this subchapter. Under [Pursuant to the] Texas Clean Air Act, §382.051, any new composting or mulching operation which meets all of the applicable requirements of this subchapter is [hereby] entitled to an air quality standard permit authorization under this subchapter in lieu of the requirement to obtain an air quality permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

(2) Those composting or mulching operations which would otherwise be required to obtain air quality authorization under Chapter 116 of this title [(relating to Control of Air Pollution by Permits for New Construction or Modification)], which cannot satisfy all of the requirements of this subchapter, shall apply for and obtain air quality authorization under [pursuant to] Chapter 116 of this title [(relating to Control of Air Pollution by Permits for New Construction or Modification)] in addition to any notification, registration, or permit required in this subchapter.

(3) Any composting or mulching operation authorized under this chapter which is a new major source or any modification which constitutes a major modification under nonattainment review or prevention of significant deterioration [Prevention of Significant Deterioration] review as amended by the Federal Clean Air Act amendments of 1990, and regulations promulgation thereunder, is [shall be] subject to the requirements of Chapter 116 of this title [(relating to Control of Air Pollution by Permits for New Construction or Modification)], in addition to any notification, registration, or permit required in this chapter.

(4) Composting facilities that do not wish to comply with the requirements of this section, are required to apply for and obtain air quality authorization under Chapter 116 of this title [(relating to Control of Air Pollution by Permits for New Construction or Modification)]. Once a person has applied for and obtained air quality authorization under Chapter 116 of this title [(relating to Control of Air Pollution by Permits for New Construction or Modification)], the person is exempt from the air quality requirements of this chapter.

(5) No person may concurrently hold an air quality permit issued under Chapter 116 of this title [(relating to Control of Air Pollution by Permits for New Construction or Modification)] and an air quality standard permit authorized under this chapter for composting or mulching operations at the same site.

(6) Composting or mulching operations which have authorization under this chapter shall comply with the general requirements in §332.4 of this title (relating to General Requirements), and subsections (b), (c), (d)₂ or (e) of this section₂ [; and]

(7) (No change.)

(b) Exempt operations. Composting and mulching operations that are considered exempt operations under [pursuant to] §332.3(d) of this title (relating to Applicability), and that meet the following requirements are [hereby] entitled to an air quality standard permit.

(1) If the total volume of materials to be mulched and/or composted, including in-process and processed materials at any time is greater than 2,000 cubic yards, the setback distance from all property boundaries to the edge of the area receiving, processing₂ or storing feedstock or finished product must [shall] be at least 50 feet.

(2) - (4) (No change.)

(5) If there are any changes to the composting or mulching operation that would reclassify it from an exempt operation to a notification, registration, or permit facility as authorized under §332.3 of this title [(relating to Applicability)], the operation shall obtain an air quality standard permit for a notification, registered, or permitted composting operation.

(c) Notification operations. Composting operations required to notify under [pursuant to] §332.3(c) of this title [(relating to Applicability)] which meet the following requirements are [hereby] entitled to an air quality standard permit.

(1) The setback distance from all property boundaries to the edge of the area receiving, processing, or storing feedstock or finished product must [shall] be at least 50 feet.

(2) (No change.)

(3) Prior to receiving any material with a high odor potential such as, but not limited to, dairy material feedstocks, meat, fish, and oil and grease feedstocks, the operator shall insure that there is an adequate volume of bulking material to blend with/cover the material, and shall begin processing the material in a manner that prevents nuisances.

(4) - (5) (No change.)

(6) If there are any changes to the composting or mulching operation that would reclassify it from a notification operation to a registration or permit operation as authorized under §332.3 of this title [(relating to Applicability)], the operation shall obtain an air quality standard permit for a registered or permitted composting operation.

(d) Registered operations. Composting operations required to obtain a registration under [pursuant to] §332.3(b) of this title that [(relating to Applicability) which] meet the following requirements are [hereby] entitled to an air quality standard permit.

(1) (No change.)

(2) Prior to receiving any material with a high odor potential such as, but not limited to, dairy material feedstocks, sewage sludge, meat, fish, and oil and grease feedstocks, [and grease trap waste,] the operator shall insure that there is an adequate volume of bulking material to blend with or cover [with/cover] the material, and shall begin processing the material in a manner that prevents nuisances.

(3) - (5) (No change.)

(6) If there are any changes to the composting or mulching operation that would reclassify it from a registration operation to a permit operation as authorized under §332.3 of this title

[(relating to Applicability)], the operation shall obtain an air quality standard permit for a permitted composting operation.

(e) Permit operations. Composting operations required to obtain a permit under [pursuant to] §332.3(a) of this title that [(relating to Applicability) which] meet the following requirements are [hereby] entitled to an air quality standard permit.

(1) (No change.)

(2) Prior to receiving any material with a high odor potential such as, but not limited to, dairy material feedstocks, sewage sludge, meat, fish, oil and grease feedstocks, grease trap waste, and municipal solid waste, the operator shall insure that there is an adequate volume of bulking material to blend with or cover [with/cover] the material, and shall begin processing the material in a manner that prevents nuisances.

(3) - (6) (No change.)

SUBCHAPTER C: OPERATIONS REQUIRING A REGISTRATION

§332.31, §332.37

STATUTORY AUTHORITY

The amendments are proposed under Texas Health and Safety Code, §361.428, as amended by House Bill 1791, 78th Legislature, 2003, which prohibits the commercial composting of grease trap waste without a permit; §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; §361.061, which authorizes the commission to issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste under this chapter; and §361.024, which provides the commission with rulemaking authority.

The proposed amendments implement Texas Health and Safety Code, §361.428, as amended by House Bill 1791, 78th Legislature, 2003.

§332.31. Definition of and Requirements for Registered Facilities.

(a) Definition of registered facilities. The following operations are subject to the requirements of this subchapter:

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

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

(3) operations [Operations] that compost source-separated organic materials not exempted under §332.3(d) of this title (relating to Applicability); [.]

[(4) Operations that compost grease trap waste.]

(4) [(5)] operations [Operations] that compost disposable diapers or paper products soiled by human excreta; [.]

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

(6) [(7)] operations [Operations] that incorporate any of the materials set forth in paragraphs (1) - (5) [(6)] of this subsection with source-separated yard trimmings, clean wood material, vegetative material, paper, manure, meat, fish, dairy, oil, grease materials, or dead animal carcasses.

(b) Requirements for registered facilities. The operations listed in subsection (a) of this section are subject to the requirements [of the General Requirements] found in §332.4 of this title (relating to General Requirements), the requirements set forth in this subchapter, the requirements set forth in Subchapter G of this chapter (relating to End-Product Standards) and the air quality requirements set forth in §332.8 of this title (relating to Air Quality Requirements).

§332.37. Operational Requirements.

The operation of the facility must [shall] comply with all of the following operational requirements.

(1) Protection of surface water. The facility must [shall] be constructed, maintained, and operated to manage run-on and run-off during a 25-year, 24-hour rainfall event and must [shall] prevent discharge into waters in the state of feedstock material, including, but not limited to, in-process and/or processed materials. Any waters coming into contact with feedstock, in-process, and processed materials must [shall] be considered leachate. Leachate must [shall] be contained in retention facilities until reapplied on piles of feedstock, in-process, or unprocessed materials. The retention facilities must [shall] be lined and the liner must [shall] be constructed in compliance with paragraph (2) of this section. Leachate may be treated and processed at an authorized facility or as authorized by a Texas Pollutant Discharge Elimination System [an NPDES] permit. The use of leachate in any processing must [shall] be conducted in a manner that does not contaminate the final product.

(2) Protection of groundwater. The facility must [shall] be designed, constructed, maintained, and operated to protect groundwater. Facilities that compost municipal sewage sludge, [grease trap waste,] disposable diapers, and/or the sludge byproduct of paper mill production must [shall] install and maintain a liner system complying with the provisions of subparagraph (A), (B), or (C) of this paragraph. The liner system must [shall] be provided where receiving, mixing, composting, post-processing, screening, or [and] storage areas would be in contact with the ground or in areas where leachate, contaminated materials, contaminated product, or contaminated water is stored or retained. The application must [shall] demonstrate the facility is designed [so as not] to prevent contamination or degradation of [contaminate] the groundwater [and so as to protect the existing groundwater quality from degradation]. For the purposes of these sections, protection of the groundwater includes the protection of perched water or shallow surface infiltration. The lined surface must [shall] be covered with a material designed to withstand normal traffic from the composting operations. At a minimum, the lined surface must [shall] consist of soil, synthetic, or an alternative material that is equivalent to two feet of compacted clay with a hydraulic conductivity of 1×10^{-7} centimeters per second or less.

(A) Soil liners shall have more than 30% passing a number 200 sieve, have a liquid limit greater than 30%, and a plasticity index greater than 15.

(B) (No change.)

(C) Alternative designs shall utilize [An alternative design that utilizes] an impermeable liner (such as concrete).

(3) - (6) (No change.)

(7) Site sign. The facility shall have a sign at the entrance indicating the type of facility, the registration number, hours of operation, and the allowable feedstocks.

(8) - (9) (No change.)

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

(11) End-product standards.

(A) (No change.)

(B) All other registered facilities. The operator shall meet compost testing requirements set forth in §332.71 of this title (relating to Sampling and Analysis Requirements for Final Product), final product grades set forth in §332.72 of this title [(relating to Final Product Grades)], and label all materials which are sold or distributed as set forth in §332.74 of this title (relating to Compost [Final Product] Labelling Requirements).

(12) Certified operator. The operator shall employ at least one TCEQ-certified [TNRCC-certified] compost operator within six months from the adoption of this rule [title], the initiation of operations at the compost facility, or the establishment of the compost certification program, which ever occurs later, and a TCEQ-certified [TNRCC-certified] compost operator shall routinely be available on-site [on site] during the hours of operation.

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

SUBCHAPTER D: OPERATIONS REQUIRING A PERMIT

§332.41, §332.47

STATUTORY AUTHORITY

The amendments are proposed under Texas Health and Safety Code, §361.428, as amended by House Bill 1791, 78th Legislature, 2003, which prohibits the commercial composting of grease trap waste without a permit; §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; §361.061, which authorizes the commission to issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste under this chapter; and §361.024, which provides the commission with rulemaking authority.

The proposed amendments implement Texas Health and Safety Code, §361.428, as amended by House Bill 1791, 78th Legislature, 2003.

§332.41. Definition, Requirements, and Application Processing for a Permit Facility.

(a) Definition of permitted facilities. The following operations are subject to the requirements of this subchapter: [.]

(1) operations [Operations] that compost mixed municipal solid waste not in accordance with §332.31 of this title (relating to Definition of and Requirements for Registered Facilities); [.]

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

(3) operations that compost grease trap waste.

(b) Requirements for permitted facilities. The operations listed in subsection (a) of this section are subject to the general requirements found in §332.4 of this title (relating to General Requirements), and the requirements set forth in this subchapter, the requirements set forth in Subchapters E - G [E, F, and G] of this chapter (relating to Source-Separated Recycling; [and] Household Hazardous Waste Collection; and End-Product Standards), and the air quality requirements set forth in §332.8 of this title (relating to Air Quality Requirements).

(c) Processing of application for permit facility [Application for Permit Facility].

(1) Public notice [Notice].

(A) When an application is administratively complete, the chief clerk shall mail notice to adjacent landowners, residents, and businesses. The chief clerk also shall mail notice to other affected landowners, residents, and businesses, as directed by the executive director.

(B) When an application is technically complete, the chief clerk shall mail notice to adjacent landowners, residents, and businesses. The chief clerk shall also mail notice to other affected landowners, residents, and businesses, as directed by the executive director. The applicant shall publish notice in the county in which the facility is located, and in adjacent counties. The published notice shall be published once a week for three weeks, with the first publication occurring no earlier than 30 days before any hearing. The applicant should attempt to obtain publication in a Sunday edition of a newspaper. The notice shall explain the method for submitting a request for hearing or a protest.

(C) (No change.)

(2) Other chapters. A facility must obtain a permit from the commission under [pursuant to] Chapters 305 and 281 of this title (relating to Consolidated Permits; and Applications [and 281 of this title (relating to Application] Processing). A permit may be issued under Chapter 50, Subchapter G [Chapter 263, Subchapter A] of this title (relating to Action [Final Approval] by the Executive Director). The public notice requirements of Chapters 305 and 281 of this title and Chapter 39 of this title (relating to Public Notice) [305, 281, and 263] apply to the extent consistent with this subchapter.

§332.47. Permit Application Preparation.

To assist the commission in evaluating the technical merits of a compost facility, an applicant subject to this chapter shall submit a site development plan [shall be prepared and submitted] to the commission along with Compost Form Number 3. The site development plan must [shall] be sealed by a registered professional engineer in accordance with the provisions of 22 TAC §131.166 (relating to Engineers' Seals) [§131.138 (Engineers' Seals)]. If the site development plan is submitted in a three-ring [three ring] binder or in a format that allows the removal or insertion of individual pages, it will [shall] not be considered a bound document. The site development plan must [shall] contain all of the following information.

(1) Title page. A title page shall show the name of the project, the county (and city if applicable) in which the proposed project is located, the name of the applicant, the name of the engineer, the date the application was prepared, and the latest date the application was revised.

(2) Table of contents. A table of contents shall be included which lists the main sections of the plan, any requested variances, and includes page numbers.

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

(4) Land use [Use]. To assist the executive director in evaluating the impact of the facility on the surrounding area, the applicant shall provide the following:

(A) - (B) (No change.)

(C) proximity to residences and other uses (e.g., schools, churches, cemeteries, historic structures, historic sites, archaeologically significant sites, sites having exceptional aesthetic quality, parks, recreational sites, recreational facilities, licensed day care, etc.). Give the approximate number of residences and business establishments within one mile of the proposed facility including the distances and directions to the nearest residences and businesses;

(D) (No change.)

(E) a constructed land use map showing the land use, zoning, residences, businesses, schools, churches, cemeteries, historic structures, historic sites, archaeologically significant sites, sites having exceptional aesthetic quality, licensed day care centers, parks, recreational sites and recreational facilities within one mile of the facility, and wells within 500 feet of the facility.

(5) Access. To assist the executive director in evaluating the impact of the facility on the surrounding roadway system, the applicant shall provide the following:

(A) data [Data] on the roadways, within one mile of the facility, used to access the facility. The data shall include dimensions, surfacing, general condition, capacity and load limits;

(B) data [Data] on the volume of vehicular traffic on access roads within one mile of the proposed facility. The applicant shall include both existing and projected traffic during the life of the facility (for projected include both traffic generated by the facility and anticipated increase without the facility);

(C) an [An] analysis of the impact the facility will have on the area roadway system, including a discussion on any mitigating measures (turning lanes, roadway improvements, intersection improvements, etc.) proposed with the project; and

(D) an [An] access roadway map showing all area roadways within a mile of the facility. The data and analysis required in subparagraphs (A) - (C) [(A), (B), and (C)] of this paragraph shall be keyed to this map.

(6) Facility development. To assist the executive director in evaluating the impact of the facility on the environment, the applicant shall provide the following.

(A) Surface water protection plan. The surface water protection plan shall be prepared by a registered professional engineer. At a minimum, the applicant shall provide all of the following: [.]

(i) [Present] a design for a run-on control system capable of preventing flow onto the facility during the peak discharge from at least a 25-year, 24-hour rainfall event; [.]

(ii) [Present] a design for a run-off management system to collect and control at least the peak discharge from the facility generated by a 25-year 24-hour rainfall event; [.]

(iii) [Present] a design for a contaminated water collection system to collect and contain all leachate. If the design uses leachate for any processing, the applicant shall clearly demonstrate that such use will not result in contamination of the final product; and [.]

(iv) [Present] drainage calculations as follows.

(I) - (III) (No change.)

(IV) Temporary and permanent erosion control measures shall be discussed; [.]

(v) drainage maps and drainage plans [Drainage Maps and Drainage Plans shall be provided] as follows; [.]

(I) an [An] off-site topographic drainage map showing all areas which contribute to the facilities run-on. The map shall delineate the drainage basins and sub-basins,

show the direction of flow, time of concentration, basin area, rainfall intensity, and flow rate. This map shall also show all creeks, rivers, intermittent streams, lakes, bayous, bays, estuaries, arroyos, and other surface waters in the state; [.]

(II) a [A] pre-construction on-site drainage map. The map shall delineate the drainage basins and sub-basins, show the direction of flow, time of concentration, basin area, rainfall intensity, and flow rate; [.]

(III) a [A] post-construction on-site drainage map. The map shall delineate the drainage basins and sub-basins, show the direction of flow, time of concentration, basin area, rainfall intensity, and flow rate; [.]

(IV) a [A] drainage facilities map. The map shall show all proposed drainage facilities (ditches, ponds, piping, inlets, outfalls, structures, etc.) and design parameters (velocities, cross-section areas, grades, flowline elevations, etc.). Complete cross-sections of all ditches and ponds shall be included; [.]

(V) a [A] profile drawing. The drawing shall include profiles of all ditches and pipes. Profiles shall include top of bank, flowline, hydraulic grade, and existing groundline. Ditches and swells shall have a minimum of one foot of freeboard; [.]

(VI) a [A] floodplain and wetlands map. The map shall show the location and lateral extent of all floodplains and wetlands on the site and on lands within 500 feet of the site; and [.]

(VII) an [An] erosion control map which indicates placement of erosion control features on the site.

(B) Geologic/hydrogeologic [Geologic/Hydrogeologic] report. The geologic/hydrogeologic report shall be prepared by an engineer or qualified geologist/hydrogeologist. The applicant shall include discussion and information on all of the following:

(i) (No change.)

(ii) a [A] description of the geologic processes active in the vicinity of the facility. This description shall include an identification of any faults and/or subsidence in the area of the facility; [.]

(iii) a [A] description of the regional aquifers in the vicinity of the facility based upon published and open-file sources. The section shall provide:

(I) - (IV) (No change.)

(V) the present use of ground water withdrawn from aquifers in the vicinity of the facility; [.]

(iv) subsurface [Subsurface] investigation report. This report shall describe all borings drilled on-site to test soils and characterize ground water and shall include a site map drawn to scale showing the surveyed locations and elevations of the boring. Boring logs shall include a detailed description of materials encountered including any discontinuities such as fractures, fissures, slickensides, lenses, or seams. Each boring shall be presented in the form of a log that contains, at a minimum, the boring number; surface elevation and location coordinates; and a columnar section with text showing the elevation of all contacts between soil and rock layers description of each layer using the Unified Soil Classification, color, degree of compaction, and moisture content. A key explaining the symbols used on the boring logs and the classification terminology for soil type, consistency, and structure shall be provided.

(I) A sufficient number of borings shall be performed to establish subsurface stratigraphy and to determine geotechnical properties of the soils and rocks beneath the facility. The number of borings necessary can only be determined after the general characteristics of a site are analyzed and will vary depending on the heterogeneity of subsurface materials. The minimum number of borings required for a site shall be three for sites of five acres or less, and for sites larger than five acres the required number of borings shall be three borings plus one boring for each additional five acres or fraction thereof. The boring plan shall be approved by the executive director prior to performing the bores.

(II) - (VI) (No change.)

(v) Groundwater [Ground water] investigation report. This report shall establish and present the groundwater [ground water] flow characteristics at the site which shall include groundwater [ground water] elevation, gradient, and direction of flow. The flow characteristics and most likely pathway(s) for pollutant migration shall be discussed in a narrative format and shown graphically on a piezometric contour map. The groundwater [ground water] data shall be collected from piezometers installed at the site. The minimum number of piezometers required for the site shall be three for sites of five acres or less, for sites greater than five acres the total number of piezometer required shall be three piezometer plus one piezometer for each additional five acres or fraction thereof.

(C) Groundwater protection plan. The application shall demonstrate the facility is designed so as not to contaminate the groundwater and so as to protect the existing groundwater quality from degradation. For the purposes of these sections, protection of the groundwater includes the protection of perched water or shallow surface infiltration. As a minimum, groundwater protection shall consist of all of the following.

(i) Liner system. All feedstock receiving, mixing, composting, post-processing, screening, and storage areas shall be located on a surface which is adequately lined to control seepage. The lined surface shall be covered with a material designed to withstand normal traffic from the composting operations. At a minimum, the lined surface shall consist of soil, synthetic, or an

alternative material that is equivalent to two feet of compacted clay with a hydraulic conductivity of 1×10^{-7} centimeters per second or less.

(I) Soil liners shall have more than 30% passing a number 200 sieve, have a liquid limit greater than 30%₂ and a plasticity index greater than 15₂ [;]

(II) Synthetic liners shall be a membrane with a minimum thickness of 20 mils₂ [; or]

(III) Alternative designs shall utilize [An alternative design that utilizes] an impermeable liner (such as concrete).

(ii) Groundwater [Ground water] monitor system. The groundwater [ground water] monitoring system shall be designed and installed such that the system will reasonably assure detection of any contamination of the groundwater [ground water] before it migrates beyond the boundaries of the site. The monitoring system shall be designed based upon the information obtained in the "Groundwater [Ground water] investigation report" required by subparagraph (B)(v) [(6)(B)(v)] of this paragraph.

(I) (No change.)

(II) A groundwater sampling program shall provide four background ground water samples of all monitor wells within 24 months from the date of the issuance of the permit. The background levels shall be established from samples collected from each well at least once during each of the four calendar quarters: January - March; April - June; July - September; and October - December. Samples from any monitor well shall not be collected for at least 45 days following collection of a previous sample, unless a replacement sample is necessary. At least one sample per well shall be collected and submitted to a laboratory for analysis prior to accepting any material for processing at the facility. Background samples shall be analyzed for the parameters as follows:

(-a-) heavy [Heavy] metals; arsenic, copper, mercury, barium, iron, selenium, cadmium, lead, chromium, and zinc;

(-b-) other [Other] parameters: calcium, magnesium, sodium, carbonate, bicarbonate, sulphate, fluoride, nitrate (as N), total dissolved solids, phenolphthalein alkalinity as CaCO₃, alkalinity as CaCO₃, hardness as CaCO₃, pH, specific conductance, anion-cation balance, groundwater elevation (MSL), and total organic carbon (TOC) (four replicates/sample); and

(-c-) after [After] background values have been determined the following indicators shall be measured at a minimum of 12 month intervals: TOC (four replicates), iron, manganese, pH, chloride, ground water elevation (MSL), and total dissolved solids.

After completion of the analysis, a copy shall be sent to the executive director and a copy shall be maintained on-site.

(D) Facility plan and facility layout. The facility plan and facility layout must [shall] be prepared by a registered professional engineer. All proposed facilities, structures, and improvements must [shall] be clearly shown and annotated on this drawing. The plan must [shall] be drawn to standard engineering scale. Any necessary details or sections must [shall] be included. As a minimum, the plan must [shall] show property boundaries, fencing, internal roadways, tipping area, processing area, post-processing area, facility office, sanitary facilities, potable water facilities, storage areas, etc. If phasing is proposed for the facility, a separate facility plan for each phase is required.

(E) Process description. The process description shall be composed of a descriptive narrative along with a process diagram. The process description shall include all of the following.

(i) (No change.)

(ii) Tipping process. Indicate what happens to the feedstock material from the point it enters the gate. Indicate how the material is handled in the tipping area, how long it remains in the tipping area, what equipment is used, how the material is evacuated from the tipping area, at what interval the tipping area is cleaned, and the process used to clean the tipping area.

(iii) (No change.)

(iv) Post-processing. Provide a complete narrative on the post-processing, include post-processing times, identification and segregation of product, storage of product, quality assurance, and quality control.

(v) - (vi) (No change.)

(7) Site operating plan. This document is to provide guidance from the design engineer to site management and operating personnel in sufficient detail to enable them to conduct day-to-day [day to day] operations in a manner consistent with the engineer's [engineers] design. As a minimum, the site operating plan shall include specific guidance or instructions on the all of the following:

(A) - (B) (No change.)

(C) security, site access control, traffic control, and safety;

(D) control of dumping within designated areas, and screening for unprocessable or unauthorized material;

(E) - (G) (No change.)

(H) quality assurance and quality control. As a minimum, the applicant shall provide testing and assurance in accordance with the provisions of §332.71 of this title (relating to Sampling and Analysis Requirements for Final Product);

(I) - (L) (No change.)

(8) (No change.)

(9) Financial assurance. The applicant shall prepare a closure plan acceptable to the executive director and provide evidence of financial assurance to the commission for the cost of closure. The closure plan at a minimum, shall include evacuation of all material on-site (feedstock, in process, and processed) to an authorized facility and disinfection of all leachate handling facilities, tipping area, processing area, and post-processing area and shall be based on the worst case closure scenario for the facility, including the assumption that all storage and processing areas are filled to capacity. The financial assurance may be demonstrated by using one or more of the following mechanisms: trust funds, surety bonds, letters of credit, insurance, financial test, and corporate guarantee. These mechanisms shall be prepared on forms approved by the executive director and shall be submitted to the commission 60 days prior to the receiving of any materials for processing. Financial assurance mechanisms prepared are subject to the requirements of Chapter 37 of this title (relating to Financial Assurance).

(10) (No change.)

(11) Landowner list. The applicant shall include a list of landowners, residents, and businesses within one-half [one half] mile of the facility boundaries along with an appropriately scaled map locating property owned by the landowners.