

The Texas Commission on Environmental Quality (commission) adopts amendments to §330.3 and §330.280. The commission also adopts the repeal of §330.282 and simultaneously adopts new §330.282. Section 330.282 is adopted *with change* to the proposed text as published in the April 23, 2004 issue of the *Texas Register* (29 TexReg 3926) and will be republished. Section 330.3 and 330.280 are adopted *without change* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

This rulemaking implements the requirements of House Bill (HB) 1823, 78th Legislature, 2003, which amends Texas Health and Safety Code (THSC), §361.119, to require that owners and operators of recycling facilities, including composting or mulching facilities, have sufficient financial assurance in place. The financial assurance must be conditioned on satisfactorily operating and closing the facility, consistent with the requirements of THSC, §361.085, for a solid waste facility other than a facility for the disposal of hazardous waste. HB 1823 applies to an owner or operator of a recycling facility at which combustible material is stored outdoors or that poses a significant risk to public health and safety as determined by the commission. The legislation also exempts a facility that is owned, operated, or affiliated with a person who has a permit to dispose of municipal solid waste from rules adopted under this section of law.

Corresponding rulemakings published in the Adopted Rules section of this issue of the *Texas Register* include changes to 30 TAC Chapter 37, Financial Assurance; Chapter 328, Waste Minimization and Recycling; Chapter 332, Composting; and Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste.

SECTION BY SECTION DISCUSSION

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

The adopted amendment to §330.3(h), Applicability, outlines the HB 1823 requirements that owners and operators of recycling facilities that store combustible materials outdoors, or that pose significant risk to public health and safety as determined by the executive director, are required to demonstrate financial assurance.

The adopted amendment to §330.280, Applicability, adds financial assurance requirements to municipal solid waste process facilities that store combustible materials outdoors, or that pose a significant risk to public health and safety as determined by the executive director.

Adopted new §330.282, Closure for Process Facilities, replaces the adopted repeal of §330.282.

Adopted new §330.282(a) requires the owner or operator of an affected facility to submit a written cost estimate for closure of the facility. In order to ensure that financial assurance will cover closure costs for a facility, this estimate must be based on the collection and disposition of processed and unprocessed materials in cubic yard and/or short ton measure by a third party not owned or affiliated with the recycling facility.

The word “detailed” has been deleted since proposal from §330.282(a)(1) to allow facilities to use a simple cost-estimate formula. The language that read “the cost estimate for financial assurance must be submitted with any new permit application; with any application for a permit transfer; as a modification for all existing municipal solid waste process facilities that remain in operation after October 9, 1993; or as otherwise requested by the executive director” has also been deleted because it was not necessary. Language requiring the closure cost estimate to show the cost of disposal of processed and unprocessed materials has been replaced with language requiring the estimate to show the cost of “disposition” of all processed and unprocessed materials in accordance with all applicable regulations. This section has also been amended since proposal to allow the executive director to approve exceptions to these requirements. Executive director discretion is provided in amended §330.282(a)(1) to avoid applying these requirements in circumstances where this will result in unreasonable and unduly burdensome requirements for recyclers. Exceptions approved by the executive director may be revoked if the executive director determines that circumstances do not warrant an exception to the requirements of these rules.

The commission also revised the rule in §330.282(a)(2)(A) to include the words “combustible” and “stored outdoors” to be consistent with the legislative language. Section 330.282(a)(2)(A) and (C) has been revised to reflect that the cost estimate must be based on the disposition costs instead of the disposal costs.

Adopted new §330.282(b) establishes the actual financial assurance requirement for owners or operators of recycling facilities that store combustible materials outdoors or that pose a significant risk to public

health and safety. The subsection also refers affected entities to 30 TAC Chapter 37, Subchapter J for specific financial assurance requirements for recycling facilities.

Adopted new §330.282(c) describes requirements for closure of affected recycling facilities. This subsection defines closure to include the collection, transportation, and disposition of processed and unprocessed materials. The deadline for closure is set at 180 days following the most recent acceptance of material unless otherwise approved or directed by the executive director.

Section 330.282(d) has been added since proposal to explain that §330.282 does not apply to process facilities that are otherwise required to have financial assurance.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted 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 adopted rules is to require the owner or operator of an affected recycling facility to have sufficient financial assurance to properly close a facility. These rules will apply to recycling facilities that store combustible material outdoors and recycling facilities that pose a significant risk to public health and safety. Therefore, it is not anticipated that the adopted 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 adopted rules do not meet the definition of a major environmental rule.

Furthermore, even if the adopted rules did meet the definition of a major environmental rule, the adopted 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 adopted rules do not meet any of these requirements. First, there are no applicable federal standards that these rules would address. Second, the adopted rules do not exceed an express requirement of state law, but instead implement the statutory requirement of THSC, §361.119. Third, there is no delegation agreement that would be exceeded by these adopted rules because none relate to

this subject matter. Fourth, the commission adopts these rules under the rulemaking direction of HB 1823, amending THSC, §361.119, and not solely under the commission's general powers.

Written comments on the draft regulatory impact analysis determination were solicited during proposal.

No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these adopted rules and performed an assessment of whether the adopted rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rules is to require the owner or operator of an affected recycling facility to have sufficient financial assurance to properly close a facility. These rules will apply to recycling facilities that store combustible material outdoors and recycling facilities that pose a significant risk to public health and safety. The adopted rules would substantially advance this stated purpose by requiring that regulated facilities obtain adequate financial assurance to properly close a facility.

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

In particular, there are no burdens imposed on private real property, and the adopted rules would improve the commission's ability to ensure proper closure of certain recycling facilities. 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 adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found the rulemaking is identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules subject to the Texas Coastal Management Program (CMP), and therefore, requires 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 and determined that the adopted rulemaking is consistent with CMP goals and policies because the rulemaking is an administrative action that requires financial mechanisms to pay for closure activities; will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the adopted rules will not violate (exceed) any standards identified in the applicable CMP goals and policies.

Written comments on the consistency of this rulemaking were solicited during proposal. No comments were received on the consistency determination.

PUBLIC COMMENT

The proposed rules were published for comment in the April 23, 2004 issue of the *Texas Register* (29 TexReg 3909). A public hearing was held on May 20, 2004. The comment period closed on May 24, 2004. Comments were received from Abitibi Consolidated (AC); Austin Wood Recycling (AWR); the Compost Advisory Council of the Recycling Alliance of Texas (CACRAT); Harris County Pollution Control (HCPC); Safe Tire Disposal Corp of Texas (STDCT); Silver Creek Materials, Inc. (SCM); and one individual. Oral comments were received from CACRAT, HCPC, and one individual at the hearing. The seven commenters either opposed parts of the rulemaking or supported the rulemaking with suggested changes.

RESPONSE TO COMMENTS

AC commented that it supports the commission's efforts to encourage legitimate recycling operations, but is concerned by the lack of criteria for determining the definition of "a recycling facility that stores combustible materials outdoors." AC commented that it believes that temporary staging or storing outdoors prior to movement inside for processing was not intended to be covered by the financial assurance requirement mandated by the legislation, but that the legislation was concerned with outdoor storage of large volumes of material for extended periods of time. AC recommended that criteria be established for a minimum amount of material and/or minimum closure cost for the financial assurance requirement to apply, as well as an exemption for temporary outdoor staging or storage of materials.

The commission appreciates AC's comment that it supports the commission's efforts to encourage recycling operations.

The commission agrees that the legislation required financial assurance only for materials that are “combustible” and “stored outdoors.” The commission amended the rule in §§328.5(c)(2)(A), 330.282(a)(2)(A), and 335.24(j)(2)(A) to include the words “combustible” and “stored outdoors” in response to this comment.

The commission does not agree that establishing criteria for a minimum amount of material and/or a minimum closure cost for the financial assurance requirements would be consistent with implementation of the statutory requirements of THSC, §361.119, because the statute does not provide for any exemptions. No changes were made in response to this comment.

The commission amended the rules in §§328.5(c)(1), 330.282(a)(1), and 335.24(j)(1) to allow the executive director to approve exceptions to the closure cost estimate requirements. Executive director discretion is provided to avoid applying these requirements in circumstances where this will result in unreasonable and unduly burdensome requirements for recyclers.

AWR commented that it was opposed to the financial assurance requirements of the rulemaking, specifically the requirement of an independent third-party cost closure estimate. AWR also commented that the rulemaking would place an undue financial burden on its business, possibly forcing its closure, and urged the commission to modify the rule language as suggested by CACRAT.

The commission finds that the requirement for financial assurance based on third-party closure of a facility is appropriate as a safeguard against the possible abandonment of a facility. No changes were made in response to this comment.

Regarding AWR's comment that the rulemaking would impose an undue financial burden, the commission amended the rules in §§328.5(c)(2)(A) and (C), 330.282(a)(2)(A) and (C), and 335.24(j)(2)(A) and (C) consistent with CACRAT's comments, substituting the term "disposition" for the term "disposal." This will allow financial assurance for facility closure to consider disposition strategies other than disposal of all materials, and reduce the burden of financial assurance for facilities that can demonstrate that certain materials stored on site can be managed by a means other than disposal. The commission would not require closure cost estimates to include disposal costs for materials which are demonstrated to be products. For materials that are not demonstrated to be either products or manageable by other means, closure cost estimates must be based on disposal costs.

The commission amended the rules in §§328.5(c)(1), 330.282(a)(1), and 335.24(j)(1) to allow the executive director to approve exceptions to the closure cost estimate requirements. Executive director discretion is provided to avoid applying these requirements in circumstances where this will result in unreasonable and unduly burdensome requirements for recyclers.

CACRAT commented that it is not opposed to financial assurance as a requirement for recyclers, including mulching and composting businesses; however, CACRAT believes that the benefits of financial assurance can be gained without threatening the economic viability of these operations. Specifically, CACRAT finds the requirement to calculate facility closure costs based on the disposal of all materials on site an unnecessary burden that would fall only on legitimate recyclers, since facilities that store more than incidental amounts of materials with no economically feasible means of being recycled are unauthorized solid waste facilities, subject to enforcement under the THSC and §330.4(f). CACRAT suggested substituting the words “disposition ... in compliance with all applicable laws and regulations” for the terms “disposal.”

The commission amended the rules in §§328.5(c)(2)(A) and (C), 330.282(a)(2)(A) and (C), and 335.24(j)(2)(A) and (C) consistent with CACRAT’s comments, substituting the term “disposition” for the term “disposal.” This will allow financial assurance for facility closure to consider disposition strategies other than disposal of all materials, and reduce the burden of financial assurance for facilities that can demonstrate that certain materials stored on site can be managed by a means other than disposal. The commission would not require closure cost estimates to include disposal costs for materials which are demonstrated to be products. For materials that are not demonstrated to be either products or manageable by other means, closure cost estimates must be based on disposal costs.

The commission responds that one of the means of enforcement of this rule will come in the form of citizen complaints to the commission concerning potential “sham” recycling and composting operations. No changes were made in response to this comment.

HCPC commented that it believes that the rule meets the requirements of HB 1823 and would provide HCPC with another compliance enforcement tool. HCPC agreed with the recommendation to modify language to substitute the word “disposal” with “disposition.” HCPC requested that the rule allow the executive director discretion based on: 1) compliance history; 2) property/equipment ownership versus property/equipment renting; and 3) the status of materials-stream and long-term commitment to the recycling industry. HCPC also requested that the rule require that mechanisms of financial assurance related to existing facilities be submitted to the commission within 120 days after adoption of the rules. Finally, HCPC supported CACRAT’s comments related to the undue burden of including disposal costs in cost closure estimates, as well as the problems of enforcement against “sham” recyclers.

The commission appreciates HCPC’s comment that the rule would provide HCPC with another enforcement tool. No changes were made in response to this comment.

The commission acknowledges the need for timely implementation of these financial assurance requirements and amended the rules in response to this comment. Section 37.921 is amended to require owners or operators to submit an originally signed financial assurance mechanism to the executive director. For new facilities, owners or operators shall submit the originally signed financial assurance mechanism prior to receipt of materials or as otherwise approved by the

executive director. For facilities in existence upon the effective date of this rule, owners or operators shall submit the originally signed financial assurance mechanism within 60 days of executive director approval of the closure cost estimate as required in Chapters 328, 330, or 335 or within 180 days of the effective date of the rule, whichever occurs first; or as otherwise approved by the executive director. The commission determined that 180 days are needed to allow sufficient time for facilities to develop and submit closure cost estimates and obtain and submit financial assurance mechanisms; and for the commission to review and approve closure cost estimates.

Section 328.5(c)(1) and §335.24(j)(1) have also been amended to require existing facilities to submit a closure cost estimate within 60 days of the effective date of the rule. Section 328.5(c)(1) has been amended to require new facilities subject to Chapter 328 to submit a closure cost estimate at least 90 days prior to receipt of materials. Section 335.24(j)(1) has been amended to require new facilities subject to Chapter 335 to submit a closure cost estimate with a notification in accordance with §335.6. The commission made these changes to allow sufficient time for the development, submittal, review, and approval of closure cost estimates and to allow sufficient time for recyclers to obtain and submit financial assurance mechanisms.

In order to minimize the regulatory burden imposed on recycling facilities and to streamline the commission's review of cost estimates, the commission intends to develop a simple cost-estimate formula that can be used to calculate a closure cost estimate. The word "detailed" has been deleted from §§328.5(c)(1), 330.282(a)(1), and 335.24(j)(1) to allow facilities to use a simple cost-

estimate formula. The commission anticipates that the facilities subject to the requirements of these rules will have the option of using the cost-estimate formula or developing a detailed site-specific closure cost estimate.

In addition, the commission amended §328.5(c)(1) and §335.24(j)(1) to make the language in these rule sections more consistent with the corresponding requirements for closure cost estimates already included in §330.282(a)(1).

Regarding HCPC's comment that the rulemaking would place an undue financial burden on recycling facilities, the commission amended the rules in §§328.5(c)(2)(A) and (C), 330.282(a)(2)(A) and (C), and 335.24(j)(2)(A) and (C) consistent with CACRAT's comments, substituting the term "disposition" for the term "disposal." This will allow financial assurance for facility closure to consider disposition strategies other than disposal of all materials, and reduce the burden of financial assurance for facilities that can demonstrate that certain materials stored on site can be managed by a means other than disposal. The commission would not require closure cost estimates to include disposal costs for materials which are demonstrated to be products. For materials that are not demonstrated to be either products or manageable by other means, closure cost estimates must be based on disposal costs.

Regarding the issue of enforcement, the commission responds that one of the means of enforcement of this rule will come in the form of citizen complaints to the commission concerning

potential “sham” recycling and composting operations. No changes were made in response to this comment.

STDCT commented that the rule is incomplete and biased because it grants exemptions to those facilities that are owned and operated by or affiliated with a person who has a permit to dispose of municipal solid waste. STDCT commented that the rules encompass vague and subjective terminology. Specifically, STDCT objected to the use of the term “satisfactorily operating and closing the facility. . .”. STDCT commented that HB 1823 directed the commission to adopt rules which will assure the proper cleanup and closure of facilities “in the event of abandonment or bankruptcy.” STDCT further commented that the rules negate the necessity for proof of abandonment or bankruptcy.

The commission is charged with implementing the requirements of HB 1823 to require financial assurance for the owners or operators of recycling facilities. The exemption for facilities owned, operated, or affiliated with a person who has a permit to dispose of municipal solid waste is a statutory exemption and the commission does not have the authority to change that exemption. No changes were made in response to this comment.

The commission responds that although the phrase “satisfactorily operating and closing the facility” is used in HB 1823, this phrase is not used in the rules. The rules establish specific requirements for the financial assurance needed to meet the statutory requirement of satisfactorily operating and closing a facility. No changes were made in response to this comment.

The commission responds that the enrolled version of HB 1823 does not use the phrase “in the event of abandonment or bankruptcy.” No changes were made in response to this comment.

SCM commented that it operates in compliance with the regulations in Chapters 328 and 332, keeping incoming materials clean and grinding them within a week of arrival. SCM stated that ground material is a true commodity and should be used as such, even in the event of facility closure. Specifically, SCM suggested that the commission require financial assurance only for unground material, allowing a facility to obtain financial assurance to cover either: 1) transportation and disposition of the material; or 2) on-site processing and on-site or off-site reuse. SCM further commented that the rules could increase the gap of profitability between public and private facilities, and suggested grandfathering facilities with five or more years of good compliance histories.

The commission appreciates the efforts of recyclers and composters to comply with its regulations. The commission amended the rules in §§328.5(c)(2)(A) and (C), 330.282(a)(2)(A) and (C), and 335.24(j)(2)(A) and (C), substituting the term “disposition” for the term “disposal.” This will allow financial assurance for facility closure to consider disposition strategies other than disposal of all materials, and reduce the burden of financial assurance for facilities that can demonstrate that certain materials stored on site can be managed by a means other than disposal. The commission would not require closure cost estimates to include disposal costs for materials which are demonstrated to be products. For materials that are not demonstrated to be either products or manageable by other means, closure cost estimates must be based on disposal costs.

The commission does not agree that grandfathering facilities with five or more years of good compliance histories would be consistent with implementation of the statutory requirements of THSC, §361.119, because the statute does not provide for any exemptions. No changes were made in response to this comment.

One individual commented regarding concerns about how the commission would enforce the rule against operators that did not notify the commission of their operations or operators that just abandoned their operations. The individual also stated that the rules would only hurt the legitimate composters and believed that there was a lack of enforcement against “sham” recyclers. The individual suggested that the rule could allow discretion by the executive director to assist legitimate composters that would be unduly burdened by the rulemaking which is intended to prevent “sham” recyclers.

The commission responds that one of the means of enforcement of this rule will come in the form of citizen complaints to the commission concerning potential “sham” recycling and composting operations. No changes were made in response to this comment.

The commission amended the rules in §§328.5(c)(1), 330.282(a)(1), and 335.24(j)(1) to allow the executive director to approve exceptions to the closure cost estimate requirements. Executive director discretion is provided to avoid applying these requirements in circumstances where this will result in unreasonable and unduly burdensome requirements for recyclers.

SUBCHAPTER A: GENERAL INFORMATION

§330.3

STATUTORY AUTHORITY

The amendment is adopted under THSC, §361.119, as amended by HB 1823; and §361.017 and §361.024, which provide the commission with the authority to adopt rules necessary to carry out its power and duties under the Texas Solid Waste Disposal Act.

§330.3. Applicability.

(a) The provisions of this chapter apply to any person as defined in §330.2 of this title (relating to Definitions) involved in any aspect of the management and control of municipal solid waste (MSW) including, but not limited to, storage, collection, handling, transportation, processing, and disposal. Furthermore, these regulations apply to any person who by contract, agreement, or otherwise, arrange to process, store, or dispose of, or arranged with a transporter for transport to process, store, or dispose of, solid waste owned or possessed by the person, or by any other person or entity.

(b) For municipal solid waste landfills (MSWLFs) that stopped receiving waste before October 9, 1991, and MSW sites, only the provisions of §330.251 of this title (relating to Closure Requirements for MSWLF Units That Stop Receiving Waste Prior to October 9, 1991, and MSW Sites) apply. If not previously submitted, owners or operators shall submit a closure report that documents that MSWLF units or MSW site(s), or portions thereof, have received final cover.

(c) MSWLF units that receive waste after October 9, 1991, but stop receiving waste before October 9, 1993, are exempt from the requirements of this chapter except for the final cover requirements specified in §330.252 of this title (relating to Closure Requirements for MSWLF Units That Receive Waste on or after October 9, 1991, But Stop Receiving Waste Prior to October 9, 1993). The final cover must be installed and certified in accordance with the requirements contained in §§330.250 - 330.253 of this title (relating to Closure and Post-Closure). Owners or operators of MSWLF units described in this subsection that fail to complete cover installation and certification within the time limits specified in §§330.250 - 330.256 of this title will be subject to all the requirements of these regulations.

(d) All MSWLF units and MSW sites that receive waste on or after October 9, 1993, must comply with all requirements of these regulations, unless otherwise specified.

(e) Owners or operators of new, existing, and lateral expansions of small MSWLF units that dispose of less than 20 tons of MSW daily in the small MSWLF unit based on an annual average are exempt from §§330.200 - 330.206 of this title (relating to Groundwater Protection Design and Operation) and §§330.230, 330.231, and 330.233 - 330.242 of this title (relating to Groundwater Monitoring and Corrective Action), so long as there is no evidence of existing groundwater contamination from the small MSWLF unit, the small MSWLF unit serves a community that has no practicable waste management alternative, and the small MSWLF unit is located in an area that receives less than or equal to 25 inches of annual average precipitation. Requests for exemptions under subsection (f) of this section may be approved administratively by the executive director, upon

demonstration of compliance with these criteria. An exemption request may be denied if the executive director determines that granting the exemption could result in a substantial threat of groundwater contamination, based upon information made available to the executive director from the applicant or agency files. Owners or operators may appeal such denials to the commission for decision.

(f) Owners or operators of new, existing, and lateral expansions of small MSWLF units that meet the criteria in subsection (e) of this section must submit a certification of eligibility to the executive director and place a copy of the certification in the operating record. The certification shall be signed by a principal executive officer, a ranking elected official, or an independent professional engineer licensed to practice in the State of Texas, except that the groundwater certification must be submitted in accordance with §330.14 of this title (relating to Arid Exemption Process) and signed by a qualified groundwater scientist, as defined in this chapter. The certification must contain the following information:

(1) a certification that the MSWLF unit meets all requirements contained in subsection (e) of this section for exemptions from §§330.200 - 330.206, 330.230, 330.231, and 330.233 - 330.242 of this title;

(2) a report prepared by a qualified groundwater scientist in accordance with §330.14 of this title documenting that there is no evidence of groundwater contamination;

(3) documentation that the small MSWLF unit receives for disposal an annual average of less than 20 tons per day based upon the most recent four reporting quarters; or a certification that programs have been put in place, or will be implemented to reduce the annual average to less than 20 tons per day within one year;

(4) documentation that there are no practicable waste management alternatives available. The documentation shall demonstrate one of the following:

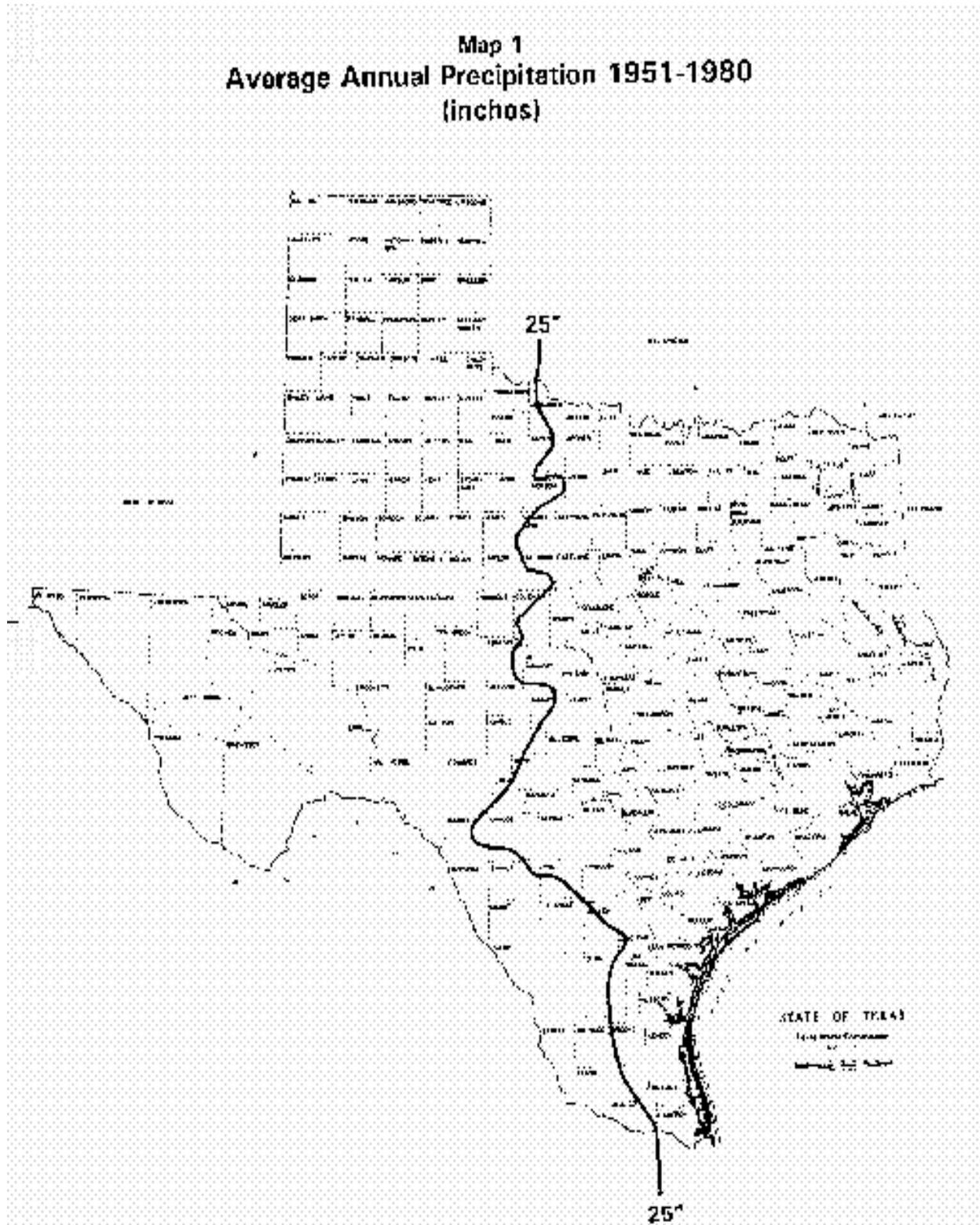
(A) additional costs of available alternatives are estimated to exceed 1.0% of the owner's or operating community's budget for all public services; or

(B) haul distances to alternative sites are unreasonably long; or

(C) all other alternatives are not feasible to implement, given the community location and economic condition;

(5) documentation that the small MSWLF unit receives less than or equal to 25 inches of average annual precipitation, as determined from the following map (Map 1) based on average annual precipitation for the years 1951 - 1980, or from precipitation data for the nearest official precipitation recording station for the most recent 30-year reporting period.

Figure: 30 TAC §330.3(f)(5) (No change.)



(g) If the owner or operator of a new, existing, or lateral expansion of a small MSWLF unit who has previously asserted eligibility in subsections (e) and (f) of this section has knowledge or becomes aware of groundwater contamination from the small MSWLF unit within a one-mile radius of the small MSWLF unit, or the unit no longer meets the definition of a small MSWLF, or the waste reduction program is ineffective (based upon an evaluation of trends established after a minimum period of a year), or a practicable alternative becomes available, the owner or operator shall notify in writing the executive director of such condition(s) and thereafter comply with §§330.200 - 330.206, 330.230, 330.231, and 330.233 - 330.242 of this title on a schedule specified by the executive director. The executive director may consider the economic investment made by the owner or operator in establishing the schedule for compliance. The minimum time allowed for compliance necessitated by loss of small MSWLF status or availability of a practicable alternative shall be 18 months.

(h) Owners or operators of MSW facilities are required to comply with the financial assurance requirements specified in Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities) and Subchapter K of this chapter (relating to Closure, Post-Closure, and Corrective Action); however, owners and operators of recycling facilities that store combustible materials outdoors, or that pose a significant risk to public health and safety as determined by the executive director, are required to comply with Chapter 37, Subchapter J of this title (relating to Financial Assurance for Recycling Facilities) rather than Chapter 37, Subchapter R of this title.

(i) A small MSWLF facility that meets the requirements of subsections (e) and (f) of this section shall maintain the integrity of any existing on-site groundwater monitor wells and make them available to the executive director for the collection of groundwater samples.

SUBCHAPTER K: CLOSURE, POST-CLOSURE, AND CORRECTIVE ACTION

§330.280, §330.282

STATUTORY AUTHORITY

The amendment and new section are adopted under THSC, §361.119, as amended by HB 1823; and §361.017 and §361.024, which provide the commission with the authority to adopt rules necessary to carry out its power and duties under the Texas Solid Waste Disposal Act.

§330.280. Applicability.

The closure, post-closure, or corrective action requirements of this section apply to owners and operators of any municipal solid waste facility authorized under this chapter and any municipal solid waste process facility as defined in §330.41(f) of this title (relating to Types of Municipal Solid Waste Sites) that stores combustible material outdoors, or that poses a significant risk to public health and safety as determined by the executive director.

§330.282. Closure for Process Facilities.

(a) Closure cost estimates.

(1) Except as otherwise approved by the executive director, an owner or operator of a recycling facility that stores combustible material outdoors, or that poses a significant risk to public

health and safety as determined by the executive director, shall provide a written cost estimate, in current dollars, showing the cost of hiring a third party to close the process facility by disposition of all processed and unprocessed materials in accordance with all applicable regulations.

(2) The estimate must:

(A) equal the costs of closure of the facility, including disposition of the maximum inventories of all processed and unprocessed combustible materials stored outdoors on site during the life of the facility, in accordance with all applicable regulations;

(B) be based on the costs of hiring a third party that is not affiliated (as defined in §328.2 of this title (relating to Definitions)) with the owner or operator; and

(C) be based on a per cubic yard and/or short ton measure for collection and disposition costs.

(3) An increase in the closure cost estimate and the amount of financial assurance provided under subsection (b) of this section must be made if changes to the facility conditions increase the maximum cost of closure at any time during the active life of the facility.

(4) A reduction in the closure cost estimate and the amount of financial assurance provided under subsection (b) of this section may be approved if the cost estimate exceeds the

maximum cost of closure at any time during the remaining life of the facility and the owner or operator has provided written notice to the executive director of the detailed justification for the reduction of the closure cost estimate and the amount of financial assurance. For a permitted or registered facility, a reduction in the cost estimate and the financial assurance must be considered a modification and must be handled as such.

(b) Financial assurance.

(1) An owner or operator of a recycling facility that stores combustible material outdoors, or that poses a significant risk to public health and safety as determined by the executive director shall establish and maintain financial assurance for closure of the facility in accordance with Chapter 37, Subchapter J of this title (relating to Financial Assurance for Recycling Facilities).

(2) Except as provided in paragraph (1) of this subsection, the owner or operator of any municipal solid waste process facility shall establish financial assurance for closure of the facility in accordance with Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities).

(3) Continuous financial assurance coverage for closure must be provided until all requirements of the final closure plan have been completed and the site is determined in writing by the executive director.

(c) Closure requirements.

(1) Closure must include collecting processed and unprocessed materials, and transporting the materials to an authorized facility for disposition unless otherwise approved or directed in writing by the executive director.

(2) Closure of the facility must be completed within 180 days following the most recent acceptance of processed or unprocessed materials unless otherwise directed or approved in writing by the executive director.

(d) This section does not apply to process facilities that are otherwise required to have financial assurance.

SUBCHAPTER K: CLOSURE, POST-CLOSURE, AND CORRECTIVE ACTION

§330.282

STATUTORY AUTHORITY

The repeal is adopted under THSC, §361.119, as amended by HB 1823; and §361.017 and §361.024, which provide the commission with the authority to adopt rules necessary to carry out its power and duties under the Texas Solid Waste Disposal Act.

§330.282. Closure for Process Facilities.