

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the amendment to §330.4. Section 330.4 is adopted *without change* to the proposed text as published in the May 28, 2004 issue of the *Texas Register* (29 TexReg 5278) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

A bill from the 77th Legislature, 2001, amended Texas Occupations Code, §801.361, Disposal of Animal Remains. This bill allowed the burning or burying of animal remains if the disposal occurred in a county with a population of less than 10,000, the burning or burying occurred on property owned by the veterinarian, and the veterinarian did not charge for disposal. This bill did not allow the burning or burying of medical waste associated with animal remains.

This rulemaking implements Senate Bill (SB) 216, 78th Legislature, 2003. This bill amended Texas Occupations Code, §801.361, and took effect September 1, 2003. Texas Occupations Code, §801.361 now allows a veterinarian to dispose of animal remains and medical waste associated with the animal by burial or burning if certain conditions are met. The veterinarian must conduct these activities on property owned by the veterinarian that is outside the corporate boundaries of a municipality or within the corporate boundaries of a municipality as a result of an annexation that occurs on or after September 1, 2003. Further, SB 216 stipulates that Texas Occupations Code, §801.361 prevails over any other law that authorizes a government entity to prohibit or restrict outdoor burning or abate a public nuisance.

In compliance with House Bill 3061, 78th Legislature, 2003, this rule was developed in cooperation with and was approved by the Texas Animal Health Commission on May 25, 2004. The commission simultaneously adopts in this issue of the *Texas Register* the amendment to 30 TAC §111.209, Exception for Disposal Fires.

SECTION DISCUSSION

The commission amends §330.4(c), (g), and (x) in order to conform with current formatting standards. In subsection (c) “MSWLF” is revised to “MSW landfill facility.” In subsection (g) the titles of §§330.150 - 330.159 are listed individually and the title of the subchapter in which these sections are contained, “Operational Standards for Solid Waste Processing and Experimental Sites” is removed. The amendment to subsection (x) replaces “RCRA” with “The Resource Conservation and Recovery Act.”

The commission revises §330.4(y) to refer to amended Texas Occupations Code, §801.361. Texas Occupations Code, §801.361 allows a veterinarian to burn or bury the remains of an animal and medical waste associated with the animal on property owned by the veterinarian without having to seek approval from the TCEQ for this activity. The veterinarian-owned property must now be outside the corporate boundaries of any municipality or within the corporate boundaries of a municipality as a result of an annexation that occurs on or after September 1, 2003. Existing language in §330.4(y) that conflicts with amended Texas Occupations Code, §801.361, is removed. Additionally, new language is added to §330.4(y) that stipulates that veterinarians who dispose by burning under this section must comply only with §111.209(3). Paragraphs (1) - (9) of this subsection are removed.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the statute. Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a).

A “major environmental rule” means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking amends §330.4(y) by removing existing language that conflicts with amended Texas Occupations Code, §801.61 and by adding language that stipulates that veterinarians burning under Texas Occupations Code, §801.361 must comply only with §111.209(3). This adopted rule does not qualify as a major environmental rule because it does not have as its specific intent the protection of the environment or the reduction of risk to human health from environmental exposure. The specific intent of this amendment is to incorporate the changes made by SB 216 into the municipal solid waste permitting exemption for the disposal of animal remains and associated medical waste by veterinarians.

In addition, a regulatory impact assessment is not required because the rule does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). The rule does not exceed a standard set by federal law because there is no corresponding federal standard. The rule does

not exceed an express requirement of state law because it is in direct response to SB 216, and does not exceed the requirements of this bill. This rule does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. This rule does not adopt a rule solely under the general powers of the agency, but rather under specific state law, namely Texas Health and Safety Code, §361.011 and §361.024.

TAKINGS IMPACT ASSESSMENT

The commission performed an assessment of this rule in accordance with Texas Government Code, §2007.043. The specific purpose of the adopted rule is to implement SB 216. The rule implements the provisions of SB 216, which modified the requirements applicable to veterinarians who wish to dispose of animal remains and associated medical waste by burying or burning without obtaining a TCEQ permit or registration. The rule substantially advances this stated purpose by modifying §330.4 to conform to the statute. The rule does not affect real property because it refers to a statute that specifies the conditions under which a veterinarian may dispose of animal remains and associated medical waste without TCEQ authorization. Therefore, the adopted rule does not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor does it affect any action/authorization

identified in §505.11. Therefore, the adopted rule is not subject to the Texas Coastal Management Program.

PUBLIC COMMENT

The commission conducted a public hearing on the rulemaking on June 24, 2004, in Austin. The Texas Veterinary Medical Association (TVMA) commented at the hearing. During the public comment period, which closed on June 28, 2004, the commission received written comments from TVMA, EPA, and Senator Judith Zaffirini. EPA stated neither support nor objection to the amendment to Chapter 330, while TVMA and Senator Zaffirini expressed opposition to the amendment to §330.4.

RESPONSE TO COMMENTS

TVMA and Senator Zaffirini commented that the net effect of the rule will be to preclude the burying of carcasses by veterinarians.

It is the agency's position that the adopted rule conforms to the intent of SB 216 and does not prohibit or restrict the activities authorized by the bill. This rule amendment refers directly to Texas Occupations Code, §801.361 as amended by SB 216.

TVMA and Senator Zaffirini commented that the majority of veterinarians using SB 216 would rather burn carcasses than bury them. However, TVMA further stated, that sometimes weather conditions don't permit burning. In this case the veterinarian has a few options including burial, transport to a landfill, or sending the carcass home with the owner so that the owner may dispose of the carcass.

TVMA pointed out that there may be public and animal health issues with the transport of carcasses and the disposal of carcasses by individual animal owners who often just dump the carcass in a pasture.

TVMA stated that under the proposed rule veterinarians who want to bury carcasses must deed record, which requires that veterinarians survey their land, record it in the county, send a copy to the TCEQ, and let the TCEQ know when they have closed the burial pit. TVMA stated that these deed recordation requirements will prevent veterinarians from using SB 216 to bury at all, which will mean sending carcasses home with the owners. TVMA and Senator Zaffirini stated that it is financially burdensome for veterinarians to survey their land and deed record in order to dispose of animals by burial. TVMA and Senator Zaffirini commented that veterinarians are highly trained and educated on proper disposal of animal remains. TVMA asked that the commission not adopt the rule as written and consider a rule that exempts veterinarians from deed recordation requirements.

The amendment does not mention deed recordation, nor does the amendment modify the deed recordation requirements for municipal solid waste. Existing 30 TAC §330.7, Deed Recordation, requires a person burying municipal solid waste, including dead animals, to deed record. This rulemaking does not open or modify §330.7, but rather it amends §330.4, Permit Required, by referencing Texas Occupations Code, §801.361.

The requirement to deed record does not prohibit conduct authorized by SB 216.

The commission agrees that veterinarians are highly trained professionals who will decide to burn or bury diseased animals based on best management practices that are protective of public and

animal health. Some diseased animal carcasses are best disposed of by burial because disease could be spread if carcasses with certain kinds of disease are disposed of by burning.

Veterinarians have access to information that will help them decide the most protective method by which to dispose of diseased animal carcasses.

TVMA and Senator Zaffirini stated that the amended rule will hold veterinarians to the same standards as other entities that are disposing of municipal solid waste.

The amendment to §330.4 does not require veterinarians to comply with all of the requirements for municipal solid waste landfills. Specifically, the amendment to §330.4 modifies the current provisions regarding disposal of the remains of an animal that dies in the care of a veterinarian. It does this by referring directly to Texas Occupations Code, §801.361.

SUBCHAPTER A: GENERAL INFORMATION

§330.4

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the commission's general authority to carry out its jurisdiction; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under this code and other laws of this state. The commission also takes this action under Texas Health and Safety Code, §361.011 and §361.024, which provide the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act.

§330.4. Permit Required.

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

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

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

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

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

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

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

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

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

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

(1) the facility or site is used as:

(A) a citizens' collection station;

(B) a collection and processing point for only nonputrescible source-separated recyclable material, provided that the facility is in compliance with §§328.3 - 328.5 of this title

(relating to General Requirements; Limitations on Storage of Recyclable Materials; and Reporting and Recordkeeping Requirements);

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

(D) a collection point for parking lot or street sweepings or wastes collected and received in sealed plastic bags from such activities as periodic city-wide cleanup campaigns and cleanup of rights-of-way or roadside parks; or

(2) the site is used for the disposal of soil, dirt, rock, sand, or other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements.

(g) A permit amendment is not required to establish a waste-separation/recycling facility established in conjunction with a permitted MSW site, or composting facility at an existing permitted MSW site if owned by the permittee of the existing site. Facilities exempted from a permit amendment under this subsection shall be registered with the executive director in accordance with §330.65 of this title (relating to Registration for Solid Waste Management Facilities). Failure to operate such registered facilities in accordance with the requirements established in §§330.150 - 330.159 of this title (relating to General; Overloading and Breakdown; Sanitation; Water Pollution Control; Ventilation and Air

Pollution Control; Litter Control; Safety; Fire Protection; Employee Sanitation Facilities; and Facility Completion and Closure Procedures) may be grounds for the revocation of the registration.

(h) A permit is not required for a site or facility where the only operation is the storage and/or processing of used and scrap tires as provided for in Chapter 328 of this title (relating to Waste Minimization and Recycling). Facilities exempted from a permit under this subsection shall be registered with the executive director in accordance with Chapter 328 of this title. Failure to operate such registered facilities in accordance with the requirements established in Chapter 328 of this title may be grounds for the revocation of the registration.

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

(j) A separate permit is not required for a facility to treat petroleum-contaminated soil if the contaminated soil is treated/processed at a permitted solid waste landfill facility. The treated soil shall be disposed of at the facility or may be used as daily cover on the facility. Any person who intends to conduct such activity under this subsection shall comply with the notification requirements of §330.8 of this title.

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

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

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

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

(m) Any change to a condition or term of an issued permit requires a permit amendment in accordance with §305.62 of this title (relating to Amendment) or a permit modification in accordance with §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications). The owner or operator shall submit an amendment or modification application in accordance with the requirements contained in §§330.50 - 330.65 of this title to address the items covered by the requested change.

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

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

(p) A permit or registration is not required for the drying of grit trap waste at a car wash facility as long as these wastes are disposed of in compliance with applicable federal, state, and local regulations. Grit trap waste from car wash facilities may be transported for drying purposes to another car wash facility if the facilities have the same owner and if the facilities are located within 50 miles of each other. This subsection is not intended to preempt or supersede local government regulation of grit trap waste-drying facilities. Drying facilities must comply with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) if applicable.

(q) In addition to permit exemptions established in subsection (d) of this section, a permit is not required for any MSW Type V transfer station that meets all of the requirements established by this subsection. Owners and operators of Type V transfer stations that meet the permit exemption requirements of this subsection and wish to exercise the exemption option shall register their operation in accordance with §330.60 of this title (relating to Technical Requirements of an Application for Registration of Solid Waste Facilities (Type V and Type VI)) and §330.65 of this title.

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

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

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

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

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

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

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

(r) A permit is not required for an MSW transfer station that is used only in the transfer of grease trap waste, grit trap waste, septage, or other similar liquid waste if the facility used in the transfer will receive 32,000 gallons per day or less. Liquid waste transfer stations that will receive 32,000 gallons a day or less may operate if they notify the executive director 30 days prior to initiating operations and if the facility is designed and operated in accordance with the requirements of §330.66

of this title (relating to Liquid Waste Transfer Facility Design and Operation). Facilities that will receive over 32,000 gallons per day must apply for a permit. A separate permit or registration is required for the storage, transportation, or handling of used oil mixtures collected from oil/water separators. Any person who intends to conduct such activity shall comply with the regulatory requirements of Chapter 324 of this title (relating to Used Oil Standards).

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

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

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

(3) the Type V processing facility is located at a manned treatment facility permitted under Texas Water Code, Chapter 26 and which is permitted to discharge at least one million gallons per day and which is owned by and operated for the benefit of a political subdivision of this state.

Facilities meeting any of these exemptions must obtain a registration by meeting the operational criteria and design criteria established in §330.71 of this title (relating to Registration for Municipal Solid Waste Facilities That Process Grease Trap Waste, Grit Trap Waste, or Septage).

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

(u) A permit is not required for an MSW Type VI facility that demonstrates new management methods for processing or handling grease trap waste, grit trap waste, or septage or a combination of these three liquid wastes. Those facilities meeting this exemption must obtain a registration by meeting the operational criteria and design criteria established in §330.73 of this title (relating to Registration of Demonstration Projects for Liquid Waste Processing Facilities).

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

(1) the litter or waste is generated on land the individual owns;

(2) the litter or waste is not generated as a result of an activity related to a commercial purpose;

(3) the disposal occurs on land the individual owns;

(4) the disposal is not for a commercial purpose;

(5) the waste disposed of is not hazardous waste or industrial waste;

(6) the volume of waste disposed of by the individual does not exceed 2,000 pounds per year;

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

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

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

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

(1) either of the following:

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

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

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

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

(x) A major permit amendment, as defined by §305.62 of this title, is required to reopen a Type I, Type I-AE, Type IV, or Type IV-AE MSW facility permitted by the commission or any of its predecessor or successor agencies that has either stopped accepting waste, or only accepted waste in accordance with an emergency authorization, for a period of five years or longer. The MSW facilities covered by this subsection may not be reopened to accept waste again unless the permittee demonstrates compliance with all applicable current state, federal, and local requirements, including the requirements of the Resource Conservation and Recovery Act, Subtitle D and the implementing Texas state regulations. If an MSW facility was subject to a contract of sale on January 1, 2001, the scope of any public hearing held on the permit amendment required by this subsection is limited to land use

compatibility, as provided by §330.51(a) of this title (relating to Permit Application for Municipal Solid Waste Facilities) and §330.61 of this title (relating to Land-Use Public Hearing). This subsection does not apply to any MSW facility that has received a permit but never received waste, or that received an approved Subtitle D permit modification before September 1, 2001.

(y) A permit or registration is not required for veterinarians performing activities as authorized by Texas Occupations Code, §801.361, Disposal of Animal Remains. Disposal by burning under this section must comply only with §111.209(3) of this title (relating to Exception for Disposal Fires).

(z) A permit by rule is granted for an animal crematory that meets the requirements of §330.75 of this title (relating to Animal Crematory Facility Design and Operational Requirements for Permitting by Rule). Facilities that do not meet all the requirements of §330.75 of this title require a permit under §330.51 of this title.

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

