

The Texas Commission on Environmental Quality (commission) proposes amendments to §§330.2, 330.111 - 330.117, 330.119 - 330.138, and 330.200. The commission also proposes the repeal of §330.118 and new §330.118.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

This rulemaking is based on instructions received at the commission Agenda on March 24, 2004. The commission directed staff to initiate rulemaking on a comprehensive set of rule amendments regarding site operating plans for municipal solid waste facilities. The site operating plan issues that need to be addressed include: the level of detail needed; requirements which provide certainty; enforceability; and balancing need for specificity, flexibility, enforceability, and environmental protection.

Clearer rules will assist municipal solid waste facility permit applicants in providing adequate site operating plans and will assist them as applicants and as municipal solid waste facility operators in understanding their responsibilities. Providing greater certainty in requirements will benefit the applicants, the agency, the environment, and the public.

This rulemaking would comprehensively address which site operating plan requirements should be performance-based standards and where specificity is warranted. The rules would modify Chapter 330 to address municipal solid waste site operating plans. The commission will reconsider which of the existing requirements in the site operating plan and which of the proposed changes will apply to all municipal solid waste facilities and which will apply to only certain types of municipal solid waste facilities.

SECTION BY SECTION DISCUSSION

Administrative changes are proposed throughout the sections to be consistent with *Texas Register* requirements. The words “must” and “shall” are amended as appropriate.

Section 330.2(131), concerning Definitions, is proposed to be amended to change the definition of site operating plan to bring the definition into conformity with current program practice. The word “guidance” is changed to “instruction” so that a site operating plan is defined as a document that provides instruction to site management and operating personnel.

Section 330.111, concerning General, is proposed to be amended to obligate landfill permittees to apply for a permit modification in accordance with 30 TAC §305.70(k) to incorporate the requirements of this subchapter. The executive director would determine a schedule for permittees to submit an application to modify their permit. Timely submission of a request for a permit modification would qualify the owners or operators of existing landfills to operate under requirements contained in the existing permit until a final decision is made on the application. A permittee’s initial application will be processed as a modification and any subsequent applications will be processed in accordance with Chapter 305, Subchapter D.

The commission is actively seeking comments regarding whether these rules should include specific deadlines for permit modification application submittal and what these deadlines should be. Each active landfill permit would be required to submit a permit modification application. The timing regarding submittal of permit modification applications is under consideration by the commission.

Section 330.112, concerning Pre-Operation Notice, is proposed to be amended to give certainty to the timing of when the Soils and Liner Evaluation Report is due to the executive director for review.

Section 330.113, concerning Recordkeeping Requirements, is proposed to be amended to specify the amount of time that the owner or operator shall record occurrences in an operating record. The word “promptly” is deleted and replaced with a measurable term for certainty and for enforceability. The word “prohibited” is inserted to be consistent with language in §330.5(e) which lists prohibited waste. A specific time is added for the owner or operator to provide written notification when adding documents to the operating record; a standard is added regarding maintaining training records; a standard is added regarding maintaining personnel operator licenses; and a standard is added requiring the owner or operator to maintain records related to the annual waste acceptance rate for the facility.

Section 330.114, concerning Site Operating Plan, is proposed to be amended to add requirements regarding the description of functions and minimum position qualifications. A standard is added for the description of the equipment to be utilized at the facility based on the estimated waste acceptance rate and operational requirements, and a description of the provisions for backup equipment during periods of breakdown or maintenance of the listed equipment. The word “detailed” is deleted from §330.114(3). Site operating plan provisions, which the commission determined should be more detailed, have been revised accordingly. Site operating plan provisions, which are performance-based, may not need to be detailed. A standard is added by reference regarding training requirements under 30 TAC §335.586 (relating to Personnel Training) which must be followed. Inclusion of these new

standards will assist in compliance and enforcement. Two paragraphs in §330.114 are proposed to be deleted because they are redundant with other site operating plan requirements.

Section 330.115, concerning Fire Protection, is proposed to be amended to change the standard for the location of stockpiled soil for fire fighting to be within 600 feet of the working face. The previous criteria was 2,500 feet. This requirement is to give greater assurance of efficient fire protection. A functional requirement will better serve the intent of having soil available for fire-fighting efforts. This language adds a clear statement that gives certainty to the requirements of the contents of a site operating plan. Also a new sentence is added in this section to make it clear that specific requirements, on a site-by-site basis, are required in the site operating plan. A new standard is added that requires the site operating plan to address fire protection measures specific to individual activities. A standard is added that requires contacting the commission's regional office within 24 hours by telephone and also contacting the commission's regional office in writing within 14 days with a description of the fire and the resulting response.

Section 330.116, concerning Access Control, is proposed to be amended to require that the methods for access control be specified in the site operating plan. The proposed rule indicates that the preferred method of landfill access control is fences and gates. Standards for access control are added to require an inspection and maintenance schedule, notification to the executive director of a breach, immediate repair, and a specified time for permanent repair. These changes will make certain that the details of how this performance-based criteria will be accomplished are included in the site operating plan for the sake of enforceability.

Section 330.117, concerning Unloading of Waste, is proposed to be amended to specify that the site operating plan must specify the maximum size of the unloading area. Language referencing permit modifications for small municipal solid waste landfill facilities is deleted because existing rules under §305.62 require a major amendment to receive approval for an alternate plan for unloading. A sentence is added to make certain that the details of how this performance-based criteria will be accomplished are included in the site operating plan for the sake of enforceability. A redundant and unnecessary sentence is removed regarding brush and demolition waste. A requirement is added for a qualified attendant to inspect each load that is disposed at the landfill. The working-face attendant is given the authority and responsibility to reject unauthorized loads, have unauthorized material removed by the transporter, and/or assess appropriate surcharges, and have the unauthorized material removed by on-site personnel. Since these new requirements apply to all landfills, the similar existing provisions in §330.117(f)(3), which apply to Type IV landfills that accept rubbish, are repealed. A record of unauthorized material removal is required to be maintained in the operating record. A reference to an existing rule regarding prohibited waste is added. A standard for a sign for Type IV facilities is added regarding the receipt of putrescible and household wastes. Sentence structure is changed in several instances for certainty and enforceability.

Section 330.118, concerning Facility Operating Hours, is proposed to be repealed and replaced by a new section that changes the title of the section from “Hours of Operation” to “Facility Operating Hours.” The existing language of the section has been replaced by new language. Standards are added regarding the hours when the facility is open to accept waste, transport materials off site, conduct on-site waste management activities, and the hours when heavy equipment may operate. “Hours of operation” restricts the time when a facility is open to accept waste under the existing rules, and the proposed rule would regulate when other activities could be conducted. If some of those activities are

currently being conducted outside of a facility's authorized "hours of operation," the facility must discontinue those activities or request to modify its permit under §330.111(b) to include the operating hours for those activities. The standard hours of operation are expressed. The concept of operating Monday through Friday, unless otherwise approved in the authorization for the facility, is stated. A concept is added for the approval of alternate operating waste acceptance hours for up to five days in a one-year period to accommodate special occasions, special purpose events, holidays, or other special occurrences as specified in §305.70. A standard is added that allows the commission's regional offices to approve additional waste acceptance hours to address natural disaster situations.

Section 330.119, concerning Site Sign, is proposed to be amended to require that the site sign an emergency contact phone number for an individual with the authority for the facility when the site is closed. Adding an emergency telephone number to the site sign is a common sense, practicable, and easily enforced new standard that is not burdensome to an owner or operator. Having an emergency contact phone number posted at a vantage point visible from the outside of a closed facility will assist the timely notification of site management of the need to respond during an emergency.

Section 330.120, concerning Control of Windblown Solid Waste and Litter, is proposed to be amended to change the section title from "Control of Windblown Waste and Litter" to "Control of Windblown Solid Waste and Litter." A requirement is added to assure that the working face is maintained and operated in a manner to minimize windblown solid waste. A standard is added to require the site operating plan to use engineering methods or measures, including portable panels, temporary fencing, and perimeter fencing or comparable engineering controls to control windblown waste. Language is

added that indicates that the site operating plan must specify the means for confining windblown waste and litter. The existing two sentences regarding portable fences have been deleted. Pickup of litter scattered throughout the site, along fences and access roads, and at the gate due to wind or as a result of waste falling from vehicles is specified as daily instead of the previous weekly criteria. An additional criteria is added requiring all windblown waste from site operations and the operation of vehicles while within the site to be controlled from leaving the site boundaries and from entering any drainage features of the site. A requirement is added regarding collection and pickup of windblown waste passing beyond the site boundaries or into any drainage structure on the permitted site being returned to the active disposal area or working face at least daily. These new standards are added as common sense, practicable, and easily enforced new standards. This new language places a clear, certain, and enforceable requirement on the operator to take steps to keep waste on the site and sets a compliance standard should waste leave the site or be at risk of being discharged by runoff events.

Section 330.121, concerning Easements and Buffer Zones, is proposed to be amended to add a reference to other requirements for buffer zones.

Section 330.122, concerning Landfill Markers and Benchmark, is proposed to be amended to specify that the minimum frequency of repainting landfill markers be in the site operating plan. This standard is added to make certain that the details of how this performance-based criteria will be accomplished are included in the site operating plan for the sake of enforceability.

Section 330.123, concerning Materials Along the Route to the Site, is proposed to be amended to add a new standard of at least daily cleanup of waste materials spilled along and within the right-of-way of public access roads serving the facility for a distance of two miles in either direction from any entrances

used for the delivery of waste to the facility. An alternate cleanup frequency and distance would be allowed by permit provision. This added requirement establishes a clear, certain, and enforceable requirement for site access road cleanup. For flexibility, the language allows for alternatives and is consistent with standards set in §330.127.

Section 330.124, concerning Disposal of Large Items, is proposed to be amended to add clarity that the requirement is for landfills and to specify how items containing chlorinated fluorocarbon are handled.

Section 330.125, concerning Air Criteria, is proposed to be amended to update a rule reference concerning burning and air pollution control, and to delete a redundant sentence. New requirements of having an odor management plan that addresses the sources of odors and includes procedures to minimize them are added. Plans for odor management must include the identification of wastes that require special attention such as septage, grease trap waste, dead animals, and leachate collection and disposal. This new requirement will provide a plan to assist in the prevention of off-site odors. This new requirement makes it clear that the applicant shall provide site-specific details in the site operating plan, and makes it clear that the specific requirements, on a site-by-site basis, are required in the site operating plan.

Section 330.126, concerning Disease Vector Control, is proposed to be amended to indicate that the methods and frequencies for disease vector control must be specified in the site operating plan. This requirement is added to make certain that the details of how this performance-based criteria will be accomplished are included in the site operating plan for the sake of certainty and enforceability. This rule allows the operator to establish site-specific requirements and allows flexibility for the operator.

Section 330.127, concerning Site Access Roads, is proposed to be amended to make certain that all-weather roads are provided from the facility to access public roads and a new standard is established to require tracked mud and trash on public roadways to be removed on at least a daily basis. For enforceability, new language is added that requires the methods for controlling mud and trash tracking onto public roadways to be specified in the site operating plan. A reference to §330.55(a)(2) is added regarding existing provisions for controlling the tracking of mud and trash on public roadways to assist in compliance and enforcement review efforts. A new requirement is added that indicates that the frequency of regrading of the site access road must be specified in the site operating plan to make certain that the details of how this performance-based criteria will be accomplished are included in the site operating plan for the sake of enforceability. These new requirements provide clear, certain, and enforceable standards for on-site access road maintenance.

Section 330.128, concerning Salvaging and Scavenging, is proposed to be amended to make a language change that makes certain the distinction between Class 1 industrial and other special wastes.

Section 330.129, concerning Endangered Species Protection, is proposed to be amended to add the rule reference for criteria for the protection of endangered species as listed in §330.53(b)(13), and to specify that facilities must be operated in conformance with any endangered or threatened species protection plan required by the commission.

Section 330.131, concerning Abandoned Oil and Water Wells, is proposed to be amended to add procedural requirements for when written notice is made of the location of any and all existing or abandoned water wells situated within the facility. A sentence is added to allow water wells necessary for supply for operations at the landfill to remain in use as long as they are located outside of the

groundwater monitoring well network or the waste footprint, and are not subject to impact from landfill operations. A sentence is added to allow producing crude oil or natural gas wells that do not affect or hamper landfill operations to remain in their current state, if identified as such in the permit for the facility. A differentiation is made between state requirements and commission requirements.

Section 330.132, concerning Compaction, is proposed to be amended to require that the methods for obtaining waste compaction be specified in the site operating plan.

Section 330.133, concerning Landfill Cover, is proposed to be amended to add standards requiring intermediate cover to be topsoil that is capable of sustaining native plant growth that must be seeded or sodded immediately following its application in order to minimize erosion. This new standard requires grass cover in order to avoid areas that are exposed for years. Alternative material daily cover (ADC) requirements are changed to state procedural requirements for authorization by temporary authorization under §305.70(m) followed by a required permit amendment or permit modification in accordance with §305.70(k)(1). A standard is set regarding the use of ADC being limited to a 24-hour period after which either waste or daily cover must be placed.

Standards are changed for erosion of final or intermediate cover requiring erosion to be addressed by restoring the cover material, grading, compacting, and seeding it unless the executive director approves otherwise, based on the extent of the damage requiring more time to repair or the repairs are delayed because of weather conditions. An additional standard is set regarding the date of detection of erosion and date of completion of repairs, including reasons for any delays, to be documented in the cover inspection report. A requirement is added for the site operating plan to establish a frequency, and identify other occasions, for conducting inspections of the final and intermediate covers to detect the

need for repairs. A standard is added to specify that periodic inspections and restorations are required during the entire operational life and for the post-closure maintenance period. A phrase is added to make certain that the details of how a performance-based criteria will be accomplished are included in the site operating plan for the purpose of enforceability. A phrase is added to make it clear that the specific requirements, on a site-by-site basis, are required in the site operating plan. A requirement is added to specify that the cover inspection report must document inspections, the findings, and corrective action taken when necessary.

Section 330.134, concerning Ponded Water, is proposed to be amended to add a requirement for a ponding prevention plan in the site operating plan that identifies techniques to be used at the landfill to prevent the ponding of water over waste, an inspection schedule to identify potential ponding locations, corrective actions for ponded water, and procedures to manage contaminated water. This new requirement for a ponding prevention plan will assist in the prevention of off-site odors and the undesirable mixing of water and waste. This language makes it clear that the applicant shall provide site-specific details in the site operating plan.

Section 330.135, concerning Waste in Enclosed Containers or Enclosed Vehicles Accepted at Type IV Landfills, is proposed to be amended to correct a reference from the Texas Water Commission to the commission, to correct a reference from executive director to commission, and to correct a reference regarding the Solid Waste Disposal Act.

Section 330.136, concerning Disposal of Special Wastes, is proposed to be amended to correct a reference within the chapter. A standard is set requiring containers or bags holding regulated asbestos-containing material (RACM) to be wrapped with at least six-mil polyethylene. A language change is

made regarding landfills authorized for acceptance of municipal hazardous waste from a conditionally exempt small quantity generator. The provision allowing acceptance of this waste “providing the owner or operator is willing to accept the waste” has been revised to allow acceptance of the waste “provided the owner or operator authorizes acceptance of the waste.” Language is deleted from the section regarding obsolete time frames.

Section 330.137, concerning Disposal of Industrial Wastes, is proposed to be amended to make a distinction that the executive director cannot approve a permit modification regarding Class 1 industrial solid waste unless it is authorized in the landfill permit. A change is made in the language to make a distinction about the acceptance of a specified type of Class 1 industrial waste. A requirement is added by reference for a contingency plan to meet the requirements of §335.589. Certain design requirements for trenches that accept Class 1 waste are moved from this section to §330.200, concerning Design Criteria.

Section 330.138, concerning Visual Screening of Deposited Waste, is proposed to be amended to add “Visual” to the section title and to add language to the section that specifies that the purpose of the rule is to require visual screening.

Section 330.200, concerning Design Criteria, is proposed to be amended to add certain existing design requirements for municipal solid waste landfills that accept Class 1 waste. The design criteria would be moved from existing §330.137(d) to §330.200(f). This existing design standard for groundwater protection is currently found in the site operating plan rules, but is better located in §330.200 which contains design standards for groundwater protection.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Analyst, Strategic Planning and Grants Management Section, determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency. However, fiscal implications are anticipated for units of local government that own or operate municipal solid waste landfills as a result of administration or enforcement of the proposed rules. Fiscal implications for each facility are not expected to be significant, but for municipal solid waste landfills in general, costs may be significant for the five-year period under review as a result of administration or enforcement of the proposed rules.

The proposed amendments revise operational standards, specifically site operating plan requirements, for municipal solid waste disposal facilities. Site operating plans are submitted as part of the permit application submitted to obtain authorization to operate a municipal solid waste disposal facility. The site operating plan provides procedures for site management and operating personnel to follow during the life of the disposal facility and throughout the post-closure care and maintenance period.

The proposed amendments provide the following new requirements for site operating plans: 1) a new standard for daily collection and pickup of windblown waste passing beyond the site boundaries; 2) a new standard for daily cleanup of waste materials spilled along the right-of-way of public access roads serving the facility; 3) a new standard for daily removal of tracked mud on public roadways; 4) a new requirement for an odor control plan that addresses waste specific sources of odors; 5) a new requirement for a ponded water prevention plan; 6) a new standard for the location of stockpiled soil used for fire fighting; 7) a new requirement for the description of equipment to be used at the facility based on the estimated waste acceptance rate and operational requirements; 8) new standards regarding the hours when the facility is open to accept waste, transport materials off site, conduct on-site waste

management activities, and the hours when heavy equipment may operate; 9) a new standard for windblown waste passing into any drainage structure on the permitted facility to be returned to the active disposal area or working face within 24 hours of detection; 10) a new requirement for fire protection measures specific to individual activities and wastes; 11) a new standard to contact the regional office within 24 hours in the event of a fire; and 12) a new requirement to document the annual waste acceptance rate and submit a modification to the permit application if the annual waste acceptance rate exceeds the rate specified in the permit application.

In addition, existing site operating plan requirements are also proposed to be modified as follows. The standards regarding the use of engineering controls to control windblown waste are enhanced. The pickup of litter is specified as daily instead of weekly. The landfill marker maintenance is enhanced. The standards are modified for intermediate cover to minimize erosion. Clarity is added to specify how waste items containing chlorinated fluorocarbon are handled. Alternative material daily cover requirements are changed to modify procedural requirements for authorization. Enhanced recordkeeping and employee training are required.

The agency's Municipal Solid Waste Permits Section is charged with the review of site operating plans for new, modified, and amended permit applications. The Field Operations Division will verify if a facility is operating in accordance with the site operating plan. Review of site operating plans for permit applications for existing and proposed operations will have new requirements to be considered by staff. Each existing facility will be required to submit a permit modification application to revise its site operating plans to meet the proposed rule changes. It is estimated that approximately 50 permit modification applications will be received per year for four years due to the proposed amendments, in

addition to the estimated 12 new permit or major amendment applications received annually. The fiscal implications to the agency to address the increased workload are not anticipated to be significant.

Fiscal implications are anticipated for those facilities owned or operated by local governments due to the proposed amendments. There are approximately 220 permitted municipal solid waste facilities in the state, of which approximately 180 are landfills. It is estimated that 50% of the 180 landfills (90) are owned or operated by units of local government. The new or modified requirements for site operating plans are expected to increase costs to update or develop a new site operating plan for municipal solid waste landfill permit applications, permit amendments, or permit modifications.

The site operating plans are usually prepared by a design engineer, generally procured through contract. Agency program staff estimate that to update a site operating plan under the proposed amendments, applicants would pay between \$1,000 and \$5,000. Costs to develop a new site operating plan under the proposed amendments are estimated to range between \$1,000 and \$5,000 above current costs to develop the site operating plan. These costs for new or updated site operating plans would be a one-time cost.

In addition to the costs to update or develop site operating plans, there are also expected costs for facilities to comply with the new operational requirements. New training requirements for landfill operators and new requirements for the daily cleanup of windblown waste, spilled waste, mud on public roadways, litter, and waste passing into drainage structures are expected to result in additional costs for facilities. Some of these activities are new and some were previously required on a weekly basis.

These changes are anticipated to result in additional operational costs for some facilities. Some facilities are already in compliance with the proposed requirements and these facilities would not incur additional costs. However, most facilities are not in compliance with the proposed requirements, and

additional operating costs for these facilities could be as high as \$50,000 per year, though costs to most facilities are not expected to reach that amount.

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 enhanced environmental and public health protection, as well as clearer requirements for the daily operations of municipal solid waste facilities.

Fiscal implications are anticipated for commercially owned municipal solid waste landfill owners and operators. No additional costs are anticipated for individuals who pay for municipal solid waste services as the anticipated cost for each facility to comply with the proposed amendments is not anticipated to be significant. However, facilities may choose to cover any additional operating costs through rate increases.

The proposed amendments provide new and modified requirements for site operating plans for new, modified, and amended municipal solid waste permit applications. There are an estimated 90 commercially owned landfills in the state that would be subject to the proposed amendments. Each existing facility will be required to submit a permit modification application to revise their site operating plans to meet the proposed rule changes and any new permit applications will be subject to the new site operating plan requirements. Program staff estimate that to update a site operating plan under the proposed amendments, applicants would pay between \$1,000 and \$5,000. Costs to develop a new site operating plan under the proposed amendments are estimated to range between \$1,000 and

\$5,000 above current costs to develop the site operating plan. These costs for new or updated site operating plans would be a one-time cost.

In addition to the costs to update or develop site operating plans, there are also expected costs for facilities to comply with the new operational requirements. New training requirements for landfill operators and new requirements for the daily cleanup of windblown waste, spilled waste, mud on public roadways, litter, and waste passing into drainage structures are expected to result in additional costs for facilities. Some of these activities are new and some were previously required on a weekly basis.

These changes are anticipated to result in additional operating costs for some facilities. Some facilities are already in compliance with the proposed requirements and these facilities would not incur additional costs. However, most facilities are not in compliance with the proposed requirements, and additional operating costs for these facilities could be as high as \$50,000 per year, though costs to most facilities are not expected to reach that amount.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated as a result of implementation of the proposed rules for small or micro-businesses that own or operate municipal solid waste disposal facilities. None of the facilities affected by the proposed amendments are thought to meet the definition of a small business or a micro-business.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission 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 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 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 purpose of this rulemaking is to develop rules that will provide site-specific, performance-based, enforceable site operating plans. The affected regulated community is the current and future municipal solid waste permit applicants who are required to comply with existing site operating plan rules. The proposed rules revise operational standards, specifically site operating plan requirements for municipal solid waste disposal facilities and therefore, are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that this proposed rulemaking does not meet the definition of a major environmental rule.

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

In this case, the proposed amendments to Chapter 330, Subchapter F, do not meet any of these requirements. First, the proposed rules are consistent with, and do not exceed, the standards set by federal law. Second, the proposed rules do not exceed an express requirement of state law, because there is no express requirement of state law related to the content of site operating plans. Third, the amendments do not exceed the commission's obligations to implement its federally approved Subtitle D permit program. Fourth, the commission does not propose these rules under the general powers of the agency but rather under the authority of Texas Health and Safety Code, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste. These rules are also proposed under the authority of Texas Health and Safety Code, §361.011 and §361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act. Therefore, the commission does not propose the adoption of the rules solely under the commission's general powers.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rules and performed an assessment of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of this rulemaking is to revise the operating standards, specifically the site operating plan requirements, for municipal solid waste disposal facilities. The proposed rules would substantially advance this stated purpose by providing new and modified requirements for site operating plans for new, modified, and amended municipal solid waste permits. The proposed rules will provide a benefit to society through enhanced environmental and public health protection, as well as clearer requirements for the daily operation of municipal solid waste facilities. Promulgation and enforcement of the proposed rules would be neither a statutory nor a constitutional taking of private real property because the rules do not affect real property in a manner which restricts or limits the owner's right to the property that would otherwise exist in the absence of the proposed rules or cause a reduction in value by 25% or more beyond that which would otherwise exist in the absence of the proposed rules. Therefore, this rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (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 rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is therefore consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking with the CMP may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on September 1, 2004 at 10:00 a.m. in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle.

The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, 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 Project Number 2004-050-330-WS. Comments must be received by 5:00 p.m., September 13, 2004. For further information or questions concerning this proposal, please contact Debi Dyer, Policy and Regulations Division, at (512) 239-3972.

SUBCHAPTER A: GENERAL INFORMATION

§330.2

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; Texas Health and Safety Code, §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; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste.

The amendment implements Texas Health and Safety Code, §361.024 and §361.061.

§330.2. Definitions.

Unless otherwise noted, all terms contained in this section are defined by their plain meaning. This section contains definitions for terms that appear throughout this chapter. Additional definitions may appear in the specific section to which they apply. As used in this chapter, words in the masculine gender also include the feminine and neuter genders, words in the feminine gender also include the masculine and neuter genders; words in the singular include the plural and words in the plural include the singular. The following words and terms, when used in this chapter, have the following meanings.

(131) **Site operating plan** - A document, prepared by the design engineer in collaboration with the site operator, that provides instruction [guidance] to site management and operating personnel [in sufficient detail] to enable them to conduct day-to-day operations throughout the life of the site and any post-closure care period in a manner consistent with the engineer's design and the commission's regulations to protect human health and the environment and prevent nuisances.

(132) - (168) (No change.)

SUBCHAPTER F: OPERATIONAL STANDARDS FOR SOLID WASTE LAND DISPOSAL

§§330.111 - 330.138

STATUTORY AUTHORITY

The amendments and new section are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; Texas Health and Safety Code, §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; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste.

The amendments and new section implement Texas Health and Safety Code, §361.024 and §361.061.

§330.111. General.

(a) The approved site development plan, the site operating plan, the final closure plan, the post-closure maintenance plan, the landfill gas management plan, and all other documents and plans required by this chapter shall become operational requirements and shall be considered a part of the operating record of the facility. Any deviation from the permit and incorporated plans or other related documents associated with the permit is a violation of this chapter.

(b) To the extent that a requirement has been changed by this subchapter, the landfill permittee may continue to operate under requirements contained in previously issued permits, except as provided by this subchapter. The landfill permittee is under an obligation to apply for a permit modification in accordance with §305.70(k) of this title (relating to Municipal Solid Waste Permit and Registration Modifications), as applicable, to incorporate the amended requirements. A permittee's initial application will be processed as a modification and any subsequent applications will be processed in accordance with Chapter 305, Subchapter D of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits). The executive director will determine a schedule for permittees to submit an application to modify their permit to conform to the requirements in this subchapter. Timely submission of a request for a permit modification qualifies the owners or operators of existing landfills to operate under requirements contained in the existing permit. Any applicable statutory or regulatory requirements which take effect prior to final administrative disposition of an application for a municipal solid waste facility permit or prior to the amendment or modification of a permit shall be included in the permit.

§330.112. Pre-Operation Notice.

The owner or operator shall provide written notice in the form of a soils and liner evaluation report as described in §330.206 of this title (relating to Soils and Liner Evaluation Report (SLER) and Flexible Membrane Liner Evaluation Report (FMLER)) of the final construction and lining of a new disposal area (sector) [municipal solid waste landfill unit] to the executive director for review 14 days [and approval] prior to the placement [emplacement] of waste. If the executive director has not provided a verbal or written response by the end of the 14th day following the executive director's receipt of the report, the operator may begin placing waste [municipal solid waste landfill unit shall be considered approved for the placement of solid waste]. This provision is not applicable to the initial

opening of a municipal solid waste landfill [facility].

§330.113. Recordkeeping Requirements.

(a) (No change.)

(b) The owner or operator shall within seven days [promptly] record and retain in an operating record the following information:

(1) (No change.)

(2) inspection records, training procedures, and notification procedures relating to excluding the receipt of prohibited [regulated hazardous] waste [and PCB waste];

(3) - (11) (No change.)

(c) The owner or operator shall provide written notification annually to the executive director for each occurrence that documents from subsection (a) of this section are placed into or added to the operating record. All information contained in the operating record must [shall] be furnished upon request to the executive director and must [shall] be made available [at all reasonable times] for inspection by the executive director.

(d) (No change.)

(e) The owner or operator shall maintain training records in accordance with §335.586(d) and (e) of this title (relating to Personnel Training). [The executive director may set alternative schedules for record-keeping and notification requirements as specified in subsections (a) - (d) of this section, except for notification requirements contained in §§330.300 - 330.305 of this title (relating to Location Restrictions) for any proposed lateral expansion located within a five-mile radius of any airport runway end used by turbojet or piston-type aircraft or notification relating to landowners whose property overlies any part of the plume of contamination if contaminants have migrated off-site as indicated by ground-water sampling.]

(f) The owner or operator shall maintain personnel operator licenses issued in accordance with Chapter 30, Subchapter F of this title (relating to Municipal Solid Waste Facility Supervisors), as required.

(g) The executive director may set alternative schedules for recordkeeping and notification requirements as specified in subsections (a) - (e) of this section, except for notification requirements contained in Subchapter L of this chapter (relating to Location Restrictions) for any proposed lateral expansion located within a five-mile radius of any airport runway end used by turbojet or piston-type aircraft or notification relating to landowners whose property overlies any part of the plume of contamination, if contaminants have migrated off site as indicated by groundwater sampling.

(h) The owner or operator shall maintain records to document the annual waste acceptance rate for the facility. Documentation must include maintaining the quarterly solid waste summary reports and the annual solid waste summary reports required by §330.603 of this title (relating to Reports) in the operating record. Whenever the annual waste acceptance rate exceeds the rate estimated in the

permit application, the owner or operator shall file an application to modify the permit application, in accordance with §305.70(k) of this title (relating to Municipal Solid Waste Permit and Registration Modifications), within 90 days of the exceedance as established by the quarterly summary report. The application must propose any needed changes in the site operating plan to manage the increased waste acceptance rate to protect public health and the environment. The increased waste acceptance rate may justify requiring permit conditions that are different from or absent in the existing permit.

§330.114. Site Operating Plan.

The site operating plan [(SOP)] must include site-specific provisions to enable [shall provide operating procedures for the] site management and the site operating personnel to meet the requirements of this subchapter [in sufficient detail to enable them to conduct the day-to-day operations of the facility]. The site operating plan must [SOP shall] be retained during the active life of the site and throughout the post-closure care maintenance period. The site operating plan must [As a minimum, the SOP shall] include [specific guidance, procedures, instructions, and schedules on] the following:

(1) a description of functions and minimum position qualifications for each category of personnel to be employed at the facility and for the supervisory personnel in the chain-of-command;

(2) a description, including the minimum number, size, type, and function, of the equipment to be utilized at the facility based on the maximum waste acceptance rate and other operational requirements, and a description of the provisions for backup equipment during periods of breakdown or maintenance of this listed equipment;

(3) a [detailed] description of the procedures that the operating personnel shall follow concerning the operational requirements of this subchapter;

(4) identification of applicable training requirements under §335.586(d) and (e) of this title (relating to Personnel Training) which shall be followed;

[(4) other instructions as necessary to ensure that operating personnel comply with any other local, state, or federal regulation for the operational standards of the type of work involved at the facility; and]

(5) procedures for the detection and prevention of the disposal of prohibited wastes, including regulated hazardous waste as defined in 40 Code of Federal Regulations (CFR) Part 261 and of polychlorinated biphenyls (PCB) wastes as defined in accordance with 40 CFR [Code of Federal Regulations] Part 761, unless authorized by the United States Environmental Protection Agency. The detection and prevention program must [shall] include the following:

(A) procedures to be used by the owner or operator to ensure that incoming loads do not contain prohibited waste. The procedures must include the random inspections of incoming loads and must include the inspection of compactor vehicles; [random inspections of incoming loads unless the owner or operator takes other steps to ensure that the incoming loads do not contain regulated hazardous waste or PCB wastes. The inspection procedures shall be identified in the plan along with a backup procedure if hazardous waste is identified. The procedure shall include the inspection of compactor vehicles;]

(B) records of all inspections;

(C) training for appropriate facility personnel responsible for inspecting loads to recognize prohibited [regulated hazardous waste or PCB] waste;

(D) notification to [of] the executive director of any incident involving the receipt or disposal of prohibited waste [a regulated hazardous waste or a PCB] at the landfill; [and]

(E) provisions for the remediation of the incident; and

(6) procedures required to be included in the site operating plan by other sections of this subchapter.

[(6) a fire protection plan that shall identify the fire protection standards to be used at the facility and the training of personnel in fire-fighting techniques.]

§330.115. Fire Protection.

The owner or operator shall maintain a stockpile of soil [earth] within 600 [2,500] feet of the working face or active disposal area in such a manner that the soil is available at all times to immediately extinguish any fires. The stockpile must [shall] be sized to cover the entire working face or active disposal area that has been covered with six inches of soil, whichever is greater. Sufficient on-site equipment for movement of that soil must [earth shall] be provided at all landfills [landfills sites]. The site operating plan must contain calculations demonstrating the adequacy of the soil

stockpile. The executive director may approve alternate methods of fire protection. Accidental fires must [shall] be [promptly] extinguished within 30 minutes from detection. The potential for accidental fires shall be minimized by use of proper compaction and soil [earth] cover. The site operating plan must contain a fire protection plan that identifies the fire protection standards to be used at the facility and how personnel are trained. For any municipal solid waste activity on a landfill that stores or processes combustible materials, such as solidification basins, brush collection areas, construction waste and demolition waste areas, composting areas, mulching areas, shredding areas, and used oil storage areas, the site operating plan must address fire protection measures specific to each individual activity. If a fire occurs, the commission's regional office must be contacted immediately but no later than 24 hours by telephone and in writing within 14 days with a description of the fire and the resulting response.

§330.116. Access Control.

Public access to all municipal solid waste facilities must [shall] be controlled by means of artificial barriers, natural barriers, or a combination of both, appropriate to protect human health and safety and the environment. Uncontrolled access to other operations located at a municipal solid waste facility must [shall] be prevented. The provisions for access control must be specified in the site operating plan. The preferred method of landfill access control is fences and gates. Regardless of the access control method, the site operating plan must include an inspection and maintenance schedule, notification to the commission's regional office of a breach, provisions for temporary and permanent repairs, and a specified time for a permanent repair. The commission's regional office must be notified of the breach within 24 hours of detection. The breach must be temporarily repaired within 24 hours of detection and must be permanently repaired by the time specified on the site operating plan.

§330.117. Unloading of Waste.

(a) The unloading of solid waste must [shall] be confined to as small an area as practical. The maximum size of the unloading area must be specified in the site operating plan. The number and types of working faces (unloading areas) must be identified. A qualified [An] attendant shall be provided at all facilities [sites] to monitor all incoming loads of waste. An attendant shall also be on duty during [regular] operating hours at each [the] working face or active disposal area of all landfills [landfill sites] to direct unloading of solid waste. Appropriate signs must [shall] also be used to indicate where vehicles are to unload. The use of forced access lanes, identified by ditches, dikes, fences, or other means, must [shall] be used in conjunction with signs to prevent [for the prevention of] indiscriminate dumping. The owner or operator is not required to accept any solid waste which the owner or operator determines [they determine] will cause or may cause problems in maintaining full and continuous compliance with these sections. Small municipal solid waste landfill facilities (MSWLFs) may submit a request [for a permit modification] to receive approval for an alternate plan, if sufficient justification is provided.

(b) The unloading of waste in unauthorized areas is prohibited. [Necessary steps shall be taken by the owner or operator to ensure compliance with this provision.] Any waste deposited in an unauthorized area must [shall] be removed immediately [promptly] and disposed of properly. A qualified attendant shall inspect each load that is disposed at the landfill. The working face attendant shall have the authority and responsibility to reject unauthorized loads, have unauthorized material removed by the transporter, and/or assess appropriate surcharges, and have the unauthorized material removed by on-site personnel. A record of unauthorized material removal must be maintained in the operating record.

(c) The unloading of prohibited wastes at the municipal solid waste facility must [shall] not be allowed. Prohibited wastes are listed in §330.5(e) of this title (relating to General Prohibitions). The permit issued to the municipal solid waste facility may also prohibit other wastes. Necessary steps shall be taken by the owner or operator to ensure compliance with this provision. Any prohibited waste must [shall] be returned immediately [promptly] to the transporter or generator of the waste.

(d) Any MSWLF facility may establish a brush and/or construction-demolition (B&CD) waste area on site that is [on-site] designated to receive B&CD waste. [Any municipal solid waste facility may establish a B&CD area on site.]

(e) At Type IV landfills [sites], only B&CD wastes and rubbish (trash) that are free of putrescible and household waste are allowed [may be accepted].

(f) In addition to the other operating requirements of this subchapter, Type IV landfill operators that accept rubbish shall provide the following during all periods of operation.

(1) A written procedure retained on site to ensure that containers with any putrescible wastes are not accepted. This might include or be a combination of a manifest system, surcharges, contractual agreements with transporters, or other acceptable means. This written procedure must [shall] be made available for review by the executive director. The procedure must [shall] be followed and must [shall] be modified as necessary to accomplish its purpose.

(2) A written procedure retained on site for the removal of any putrescible wastes and other prohibited waste to an approved disposal facility must [shall] specify the means to be used for

removal of putrescible wastes illegally disposed of at the landfill [site]. In all cases, such wastes must [shall] be removed from the working face immediately upon discharge and returned to the offending transporter's [transporters's] vehicle or placed in suitable collection bins and must [shall] not be allowed to remain on the landfill [site] in the collection bins for more than 24 hours. The equipment necessary to meet the chosen alternative must [shall] be specified and must [shall] be on site and operable during operating hours. This written procedure must [shall] be made available for review by the executive director. The procedure must [shall] be followed and must [shall] be modified as necessary to accomplish its purpose.

[(3) A working-face monitor to inspect each load that is dumped at the site shall have the authority and responsibility to reject unauthorized loads, have unauthorized material removed by the transporter, and/or assess appropriate surcharges and have the unauthorized material removed by on-site personnel.]

~~(3)~~ [(4)] A procedure whereby the transporter certificates required by §330.32 of this title (relating to Collection and Transportation Requirements) must [shall] be retained at the landfill and be available for inspection by the executive director.

(g) (No change.)

(h) Type IV landfill owners or operators shall post large conspicuous warning signs measuring at least four feet by four feet with letters at least three inches in height at all entrances to the site identifying [stating that putrescible and household] wastes that are not allowed [accepted] and stating the landfill's requirements for transporters, such as certificates, manifests, and surcharges or other penalties

that may be imposed in the event that transporters do not meet the requirements of this chapter.

(i) At Type VIII facilities [sites], only used and scrap tires free of any other type of waste are allowed to [may] be accepted.

< new > §330.118. Facility Operating Hours.

(a) The site operating plan must specify the operating hours, including the hours when the facility is open to accept waste, transport materials off site, conduct on-site waste management activities, and the hours when heavy equipment may operate. The operating hours of a municipal solid waste facility must be any time between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, unless otherwise approved in the authorization for the facility. Operating hours within the 7:00 a.m. to 7:00 p.m. weekday span do not require other specific approval.

(b) In addition to the requirements of subsection (a) of this section, the executive director may approve alternate operating hours of up to five days in a calendar-year period to accommodate special occasions, special purpose events, holidays, or other special occurrences as specified in §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications).

(c) The commission's regional offices may allow additional waste acceptance hours to address disaster or other emergency situations.

§330.119. Site Sign.

Each facility must [site shall] conspicuously display at all entrances [to the site] through which wastes are received, a sign measuring at least four feet by four feet with letters at least three inches in height stating the type of site, the hours and days of operation, an emergency 24-hour contact phone number(s) that reaches an individual with the authority to obligate the facility at all times that the facility is closed, the local emergency fire department phone number, and the permit number or facility [site] number. The facility sign must be readable from the public road. The posting of erroneous or misleading information constitutes [shall constitute] a violation of this section.

§330.120. Control of Windblown Solid Waste and Litter.

The working face must be maintained and operated in a manner to minimize windblown solid waste. Windblown material and litter must [shall] be collected and returned to the active disposal area or working face in accordance with paragraph (3) of this section [as necessary] to minimize unhealthy, unsafe, or unsightly conditions.

(1) Windblown waste and litter at the working face must be controlled by using engineering methods or measures, including portable panels, temporary fencing, and perimeter fencing or comparable engineering controls. The site operating plan must specify the means for confining windblown waste and litter. [A portable fence may be employed to confine windblown material resulting from unloading, spreading, and compaction operations. If a portable fence is not practical,

other suitable practices shall be employed to control windblown material.]

(2) Litter scattered throughout the site, along fences and access roads, and at the gate [due to wind or as a result of waste falling from vehicles] must [shall] be picked up at least daily on the days the facility is in operation [weekly] and returned to the active disposal area or working face. The site operating plan must specify the means for complying with this requirement.

(3) Control measures must be provided to minimize windblown waste from leaving the facility boundaries and from entering any drainage structures of the facility. When windblown waste passes beyond the facility boundaries or into any drainage structure on the permitted site, these wastes must be collected and returned to the active disposal area or working face at least daily. The site operating plan must specify the means for complying with this requirement.

§330.121. Easements and Buffer Zones.

(a) Easement protection. No solid waste unloading, storage, disposal, or processing operations shall occur within any easement, buffer zone, or right-of-way that crosses the site. No solid waste disposal shall occur within 25 feet of the center line of any utility line or pipeline easement, unless otherwise authorized by the executive director. All pipeline and utility easements must [shall] be clearly marked with posts which extend at least six feet above ground level, spaced at intervals no greater than 300 feet.

(b) Buffer zones. A minimum separating distance of 50 feet shall be maintained between solid waste processing and disposal activities and the boundary of the facility [site], or as determined by the requirements of §330.56 of this title (relating to Attachments to the Site Development Plan). [unless otherwise authorized by the executive director.] The buffer zone must [shall not be narrower than that necessary to] provide for safe passage for fire-fighting and other emergency vehicles.

§330.122. Landfill Markers and Benchmark.

All required landfill markers and the benchmark must [shall] be maintained so that they are visible during operating hours. Markers that are removed or destroyed must [shall] be replaced within 15 days of the removal or destruction. All markers must [shall] be repainted [as necessary] to retain visibility. The minimum frequency of repainting must be specified in the site operating plan. Landfill markers must be inspected on a weekly basis to ensure that they are installed and maintained in compliance with the site operating plan. Records of all inspections must be maintained at the facility.

§330.123. Materials Along the Route to the Site.

The facility [site] owner or operator shall take steps to ensure that vehicles hauling waste to the facility [his site] are enclosed or provided with a tarpaulin, net, or other means to effectively [properly] secure the load in order to prevent the escape of any part of the load by blowing or spilling. The owner or operator shall take actions such as posting signs, reporting offenders to proper law enforcement officers, adding surcharges, or similar measures. On days when the facility is in operation, the [The]

owner or operator shall be responsible for at least daily [the] cleanup of waste materials spilled along and within the right-of-way of public access roads serving the facility [site] for a distance of two miles in either direction from any entrances used for the delivery of waste to the facility [site]. The facility [site] operator shall consult with [officials of] the Texas Department of Transportation concerning cleanup of state highways and right-of-ways. An alternate clean-up frequency and distance may be specified by permit provision.

§330.124. Disposal of Large Items.

(a) Large, heavy, or bulky items, which cannot be incorporated in the regular spreading, compaction, and covering operations at landfills should be recycled. A special area should be established to collect these items. This special collection area must [shall] be designated as a large-item salvage area. The owner or operator [owner/operator] shall remove the items from the site often enough to prevent these items from becoming a nuisance and to preclude the discharge of any pollutants from the area.

(b) (No change.)

(c) Refrigerators, freezers, air conditioners, and any other items containing chlorinated fluorocarbon (CFC) must not be knowingly accepted for disposal or disposed of in any municipal solid waste landfill unless all the CFC contained in that item is captured and sent to an approved CFC disposal site or recycling facility. If the CFC is not removed from the item, then the whole item must

be sent to an approved CFC disposal site. Such items that enter the facility with ruptured lines or holes in the CFC unit must not be accepted unless the generator or transporter provides written certification that the CFC has been evacuated from the unit and that it was not knowingly allowed to escape into the atmosphere.

§330.125. Air Criteria.

(a) The landfill is subject to commission rules [Texas Air Control Board (TACB) jurisdiction] concerning burning and air pollution control. The owner or operator shall ensure that any unit of the municipal solid waste facility does not violate any applicable requirement of the approved state implementation plan [State Implementation Plan] developed under the Federal Clean Air Act, §110, as amended, and §330.5(d) of this title (relating to General Prohibitions), which prohibits the open burning of waste at any municipal solid waste landfill facility [unit].

(b) The site operating plan must have an odor management plan that addresses the sources of odors and includes procedures to minimize odors or sources of odors. Plans for odor management must include the identification of wastes that require special attention such as septage, grease trap waste, dead animals, and leachate. [Any ponded water at the site shall be controlled to avoid its becoming a nuisance. In the event objectionable odors do occur, appropriate measures shall be taken to alleviate the condition.]

§330.126. Disease Vector Control.

The site operator shall [take the appropriate steps to] prevent and control on-site populations of disease vectors using proper compaction and daily cover procedures, and the use of other approved methods when needed. The methods and frequencies for disease vector control must be specified in the site operating plan.

§330.127. Site Access Roads.

(a) All-weather roads must [shall] be provided from the facility to access public roads and within the facility [site] to the unloading area(s) designated for wet-weather operation. Tracked mud and trash on public roadways must be removed on at least a daily basis. The methods for minimizing mud and trash tracking onto public roadways must be specified in the site operating plan. Provisions for preventing the tracking of mud and trash on public roadways are listed in §330.55(a)(2) of this title (relating to Site Development Plan). [The tracking of mud and trash onto public roadways from the site shall be minimized.]

(b) Dust from on-site and other access roadways must [shall] not become a nuisance to surrounding areas. A water source and necessary equipment or other means of dust control approved by the executive director must [shall] be provided.

(c) All on-site and other access roadways must [shall] be maintained in a clean and safe condition [on a regular basis]. Litter and any other debris must [shall] be [frequently] picked up at least daily and taken to the active disposal area or working face. Access roadways must [shall] be regraded

[as necessary] to minimize depressions, ruts, and potholes. The frequency of regrading must be specified in the site operating plan.

§330.128. Salvaging and Scavenging.

Salvaging must [shall] not be allowed to interfere with prompt sanitary disposal of solid waste or to create public health nuisances. Salvaged materials may be considered as potential recycled materials. The owner or operator [owner/operator] shall remove the salvaged items from the facility [site] often enough to prevent the items from becoming a nuisance, to preclude the discharge of any pollutants from the area, and to prevent an excessive accumulation of the material at the facility [site]. Class 1 [I] industrial and other special wastes received at the disposal facility must [site shall] not be salvaged. Pesticide, fungicide, rodenticide, and herbicide containers must [shall] not be salvaged unless being salvaged through a state-supported recycling program. Scavenging must [shall] not be allowed.

§330.129. Endangered Species Protection.

The facility and the operation of the facility must [shall] not result in the destruction or adverse modification of the critical habitat of endangered or threatened species, or cause or contribute to the taking of any endangered or threatened species. Criteria for the protection of endangered species are listed in §330.53(b)(13) of this title (relating to Technical Requirements of Part II of the Application). Facilities must be operated in conformance with any endangered or threatened species protection plan required by the commission.

§330.130. Landfill Gas Control.

All landfill gases must [shall] be monitored in accordance with a landfill gas management plan in accordance with §330.56(n) of this title (relating to Attachments to the Site Development Plan). The required reports and other submittals must [shall] be included in the operating record of the facility and submitted to the executive director.

§330.131. Abandoned Oil and Water Wells.

(a) The facility [site] operator shall immediately provide written notification to the executive director of the location of any and all existing or abandoned water wells situated within the facility [site] upon discovery during the course of facility [site] development [and facility operation]. The facility [site] operator shall, within 30 days of such a discovery, provide the executive director with written certification that all such wells have been capped, plugged, and closed in accordance with all applicable rules and regulations of the commission or other state agency. Water wells necessary for supply for operations at the landfill may remain in use as long as they are located outside of the groundwater monitoring well network or the waste footprint, and are not subject to impact from landfill operations.

(b) The facility [site] operator shall immediately provide written notification to the executive director of the location of any and all existing or abandoned on-site crude oil or natural gas wells, or other wells associated with mineral recovery that are under the jurisdiction of the Railroad Commission of Texas. The facility [site] owner or operator shall provide the executive director with written

certification that these [all such] wells have been properly capped, plugged, and closed in accordance with all applicable rules and regulations of the Railroad Commission of Texas. Producing crude oil or natural gas wells that do not affect or hamper landfill operations may remain in their current state, if identified in the permit for the facility.

(c) Any water or other type of wells under the jurisdiction of the commission must [shall] be plugged in accordance with all applicable state [commission] requirements or [and] additional requirements imposed by the executive director. A copy of the well plugging report required to be submitted to the appropriate state agency must [shall] also be submitted to the executive director within 30 days after the well has been plugged.

(d) The facility operator shall submit for executive director approval changes to the liner installation plan as a result of any well abandonment.

§330.132. Compaction.

Solid waste must [shall] be spread and compacted by repeated passages of [suitable] compaction equipment such that each layer of solid waste is thoroughly compacted. The methods for compaction must be specified in the site operating plan.

§330.133. Landfill Cover.

(a) Daily cover. All landfills, with the exception of Type IV landfills, must apply [shall provide] six inches of well-compacted soil [earthen material] not previously mixed with garbage, rubbish, or other solid waste at the end of each operating day to control disease vectors, fires, odors, windblown litter or waste, and scavenging, unless the executive director requires a more frequent interval to control disease vectors, fires, odors, windblown litter or waste, and scavenging. Landfills that operate on a 24-hour basis must [shall] cover the working face or active disposal area at least once every 24 hours. All Type IV facilities must [shall] follow the requirements of this subsection except the rate of cover must [shall] be no less than weekly, unless the commission approves another schedule. The executive director may request a chemical analysis of any landfill cover.

(b) Intermediate cover. All areas that have received waste but will be inactive for longer than 180 days must [shall] provide intermediate or final cover. This intermediate cover must be an additional six inches of suitable topsoil that is capable of sustaining native plant growth and must be seeded or sodded immediately following its application in order to minimize erosion [shall be an additional six inches of well-compacted earthen material not previously mixed with garbage, rubbish, or other solid waste for a total of not less than 12 inches of cover.] The intermediate cover must [shall] be graded to prevent ponding of water and plant growth must be maintained. Runoff [Run-off] from areas which have received intermediate cover must [shall] not be considered as having come into contact with the working face or leachate for the purpose of §330.55(b)(6) of this title (relating to Site Development Plan [Contaminated Water Treatment]).

(c) Alternative material daily cover. Alternative material daily cover (ADC) may be allowed by a temporary authorization under §305.70(m) of this title (relating to Municipal Solid Waste Permit and Registration Modifications) followed by a permit amendment [permit provision] or a [by] modification in accordance with §305.70(k)(1) of this title [(relating to Municipal Solid Waste Class I Modifications)]. Use of ADC is limited to a 24-hour period after which either waste or daily cover as defined in subsection (a) of this section must be placed.

(1) An ADC operating plan must [shall] be included in the request for temporary authorization or in the site development plan that includes the following:

- (A) a description and minimum thickness of the alternative material to be used;
- (B) its effect on vectors, fires, odors, and windblown litter and waste;
- (C) the application and operational methods to be utilized at the site when using this alternative material;
- (D) chemical analysis [composition] of the material and/or [and] the Material Safety Data [Date] Sheet(s) for the alternative material; and
- (E) any other pertinent characteristic, feature, or other factors related to the use of this alternative material.

(2) A status report on the ADC must [shall] be submitted on a two-month [quarterly] basis to the executive director during the temporary authorization period describing the effectiveness of the alternative material, any problems that may have occurred, and corrective actions required as a result of such problems. If no unresolved problems have occurred [occur] within the temporary authorization period [four consecutive quarters of use], status reports may [will] no longer be required.

(3) ADC must [shall] not be allowed when the landfill is closed for a period greater than 24 hours, unless the executive director approves an alternative length of time.

(d) Temporary waiver. The executive director may grant a temporary waiver from the requirements of subsections (a) - (c) of this section if the owner or operator [owner/operator] demonstrates that there are extreme seasonal climatic conditions that make meeting such requirements impractical.

(e) Final cover. Final cover for the landfill must [shall] be in accordance with the site closure plan and Subchapter J of this chapter (relating to Closure and Post-Closure).

(f) Erosion of cover. Erosion of final or intermediate cover must [shall] be repaired within five days of detection [promptly] by restoring the cover material, grading, compacting, and seeding unless the executive director approves otherwise, based on the extent of the damage requiring more time to repair or the repairs are delayed because of weather conditions [it as necessary]. The date of detection of erosion and date of completion of repairs, including reasons for any delays, must be

documented in the cover inspection record required under subsection (g) of this section. The site operating plan must establish a frequency, and identify other occasions, for conducting inspections of the final and intermediate covers to detect the need for repairs. The [Such] periodic inspections and restorations are required during the entire operational life and for the post-closure maintenance period.

(g) Cover inspection record [log]. Each landfill must [shall] keep a cover application record [log] on site readily available for inspection by commission representatives and authorized agents or employees of local governments having jurisdiction. This record must [log shall] specify the date cover (no exposed waste) was accomplished, how it was accomplished, and the last area covered. This applies to daily, intermediate, and alternate daily cover. For final cover, this record must [log shall] specify the area covered, the date cover was applied, and the thickness applied that date. Each entry must [shall] be certified by the signature of the on-site supervisor that the work was accomplished as [so] stated in the record [log]. The cover inspection record must document inspections required under subsection (f) of this section, the findings, and corrective action taken when necessary.

§330.134. Ponded Water.

The ponding of water over waste on a landfill [the municipal solid waste landfill facility (MSWLF) unit], regardless of its origin, must [shall] be prevented. Ponded water that occurs in the active portion of a landfill [an MSWLF unit] or on a closed landfill must [MSWLF unit shall] be eliminated [as quickly as possible] and the area in which the ponding occurred must [shall] be filled in and regraded within seven days of the occurrence. A ponding prevention plan must be provided in the

site operating plan that identifies techniques to be used at the landfill to prevent the ponding of water over waste, an inspection schedule to identify potential ponding sites, corrective actions to remove ponded water, and procedures to manage contaminated water.

§330.135. Waste in Enclosed Containers or Enclosed Vehicles Accepted at Type IV Landfills.

Acceptance of waste in enclosed containers or enclosed vehicles at Type IV landfills must [shall] be in accordance with the following requirements.

(1) Waste in enclosed containers or enclosed vehicles must [shall] not be accepted at a Type IV landfill unless all of the following conditions have been met.

(A) The landfill to receive the waste must [shall] be participating in the funding program to monitor these activities as detailed in paragraph (2) of this section [subsection].

(B) Each enclosed container or enclosed vehicle must [shall] have all required approvals and/or permits from the executive director in accordance with §330.32 of this title (relating to Collection and Transportation Requirements).

(C) Enclosed containers or enclosed vehicles must [shall] only be accepted at their designated time and on the specified day in accordance with this section, §330.32 of this title, [these sections], commission permits, or other orders of the commission.

(D) A commission [TWC] inspector shall be on site and shall witness the unloading process to ensure that no putrescible waste or household waste is present. Any waste considered nonallowable by the [TWC] inspector must [shall] be removed from the working face and subsequently from the facility [site] in accordance with §330.117 [§330.116] of this title (relating to Unloading of Waste [Access Control]).

(E) Each transporter delivering waste in enclosed containers or enclosed vehicles must [shall], prior to discharging the load, provide to the landfill operator a transporter trip ticket for the route being delivered [he is delivering]. Trip tickets must [shall] be maintained as part of the operating record.

(F) The commission [executive director] may revoke a transporter's authorization to deliver waste to a Type IV municipal solid waste [MSW] facility for failure to comply with this chapter.

(2) The executive director shall [will] determine the approximate annual costs of implementing and maintaining the surveillance and enforcement of all the activities associated with the acceptance of enclosed containers or enclosed vehicles at Type IV landfills.

(A) Notification of these costs will be provided to each affected holder of a Type IV landfill permit with notice of public hearing to apportion these costs.

(B) The public hearing will be held at a location to be determined by the commission with at least 20 days' [days] advance notice. Notice will be provided Type IV landfill operators by [written notice in] regular and certified mail.

(C) The public hearing will [shall] be for the purpose of establishing the total compensation and expenditures required to administer this program and the apportionment of those costs to the Type IV landfill operators to be reimbursed to the commission.

(D) Unless authorized by the executive director [other arrangements are made], the apportioned monthly payments will be due by the 10th day of each month.

(E) The apportioned costs to each Type IV landfill may be altered periodically to add or subtract landfills from the program. A 30-day notice will be provided to each participating Type IV landfill and/or proposed additional landfill and a hearing will be held upon request by one of the affected parties or on the commission's own motion.

(3) A Type IV landfill operator who is delinquent in making the [his] monthly payment shall immediately halt acceptance of waste in enclosed containers or enclosed vehicles and may also be subject to other penalties allowable under state law [in accordance with these sections or the Texas SWDA].

(4) Stationary compactors permitted in accordance with §330.25 of this title (relating to

Requirements for Stationary Compactors) and municipal transporter routes permitted in accordance with §330.32 of this title [(relating to Collection and Transportation Requirements)] are exempt from the requirements of paragraphs (1) - (3) of this section. However, the landfill operator shall obtain from the transporter a hauler trip ticket for a municipal transporter route or [a] stationary compactors [compactor], as appropriate, prior to allowing discharge of the material at the landfill. These trip tickets must [shall] be maintained as a part of the operating record.

§330.136. Disposal of Special Wastes.

(a) The acceptance and/or disposal of a special waste as defined in §330.2 of this title (relating to Definitions) which is not specifically identified in subsections (b) or (c) of this section, or in §330.137 of this title (relating to Disposal of Industrial Wastes), requires prior written approval from the executive director.

(1) Approvals will be waste-specific [waste specific] and/or site-specific [site specific] and will be granted only to appropriate facilities [sites] operating in compliance with this chapter.

(2) Requests for approval to accept special wastes must [shall] be submitted by the generator to the executive director and must [shall] include, but are not limited to, the following:

(A) a complete description of the chemical and physical characteristics of each waste, a statement as to whether or not each waste is a Class 1 industrial waste as defined in §330.2 of

this title [(relating to Definitions)], and the quantity and rate at which each waste is produced and/or the expected frequency of disposal;

(B) - (C) (No change.)

(3) A vacuum [Vacuum] truck, as used in this section, refers to any vehicle which transports liquid waste to a solid waste disposal or processing facility [site]. A vacuum truck must [shall] transport liquid waste to a landfill [site] that has a sludge stabilization and solidification process or to a Type V processing facility [site] for sludge [sludges], grease trap, or grit trap waste. The owner or operator shall submit written notification to the executive director of the liquids-processing activity as required in §330.8 of this title (relating to Notification Requirements).

(4) The executive director may authorize the receipt of [issue an approval to receive] special waste with a written concurrence [without a written request] from the owner or operator; however, [in such cases] the facility [site] operator is not required to accept the waste.

(5) (No change.)

(b) Receipt of the following special wastes does not specifically require written authorization for acceptance provided the waste is handled in accordance with the noted provisions for each waste.

(1) Special wastes from health care related facilities which have not been treated in

accordance with the procedures specified in Subchapter Y of this chapter [§§330.1001(-) 330.1009 of this title] (relating to Medical Waste Management) must [shall] not be accepted at a municipal solid waste landfill facility (MSWLF) unless authorized in writing by the executive director. The executive director may provide this authorization when a situation exists which requires disposal of untreated wastes in order to protect the human health and the environment from the effects of a natural or man-made disaster.

(2) (No change.)

(3) Regulated asbestos-containing material (RACM) as defined in 40 Code of Federal Regulations [CFR] §61 may be accepted at a Type I or Type I-AE MSWLF facility in accordance with subparagraphs (A) - (I) of this paragraph provided the MSWLF facility has been authorized to accept RACM. The facility [site] operator proposing to accept [contemplating acceptance of] RACM shall provide written notification to the executive director of the intent to accept RACM.

(A) To receive authorization to accept RACM, the owner or operator shall dedicate a specific area or areas of the landfill [site] to receive RACM and shall provide written notification to the executive director of the area or areas to be designated for receipt of RACM. After initial authorization to receive RACM is issued, additional areas may be designated by providing written notice to the executive director.

(B) The location of the area designated to receive the RACM must [shall] be

surveyed and marked by a registered professional land surveyor and identified on a current site diagram which is maintained at the landfill. A copy of the current site diagram identifying the RACM area must [shall] be submitted to the executive director immediately upon completion of the diagram. The operator [site] shall maintain a record of each load of RACM accepted as to its location, depth, and volume of material.

(C) Upon closure of the MSWLF unit which accepted RACM, a specific notation that the facility [site] accepted RACM must [shall] be placed in the deed records for the facility [site] with a [site] diagram identifying the RACM disposal areas. Concurrently, a notice of the deed recordation and a copy of the [site] diagram identifying the asbestos disposal areas must [shall] be submitted to the executive director.

(D) Delivery of the RACM to the MSWLF unit must [site shall] be coordinated with the on-site supervisor so the waste will arrive at a time it can be properly handled and covered.

(E) RACM must only [shall] be accepted at the facility [site only] in tightly closed and unruptured containers or bags or must [shall] be wrapped [as necessary] with at least six-mil polyethylene.

(F) The bags or containers holding the RACM must [shall] be placed below natural grade level. Where this is not possible or practical, provisions must [shall] be made to ensure

that the waste will not be subject to future exposure through erosion or weathering of the intermediate and/or final cover. RACM which is placed above natural grade must [shall] be located in the MSWLF unit such that it is, at closure of the MSWLF unit, not less than 20 feet from any final side [slide] slope of the unit and must [shall] be at least ten [10] feet below the final surface of the unit.

(G) The bags or containers holding the RACM must [shall] be carefully unloaded and placed in the final disposal location. The RACM must [They shall] be covered immediately [promptly] with 12 inches of clean soil [earthen material] or three feet of solid waste containing no asbestos. Care must [shall] be exercised in the application of the cover so that the bags or containers are not ruptured.

(H) A contingency plan in the event of accidental spills (e.g., ruptured bags or containers) shall be prepared by the owner or operator prior to accepting RACM. The plan must [shall] specify the responsible person(s) and the procedure for the collection and disposal of the spilled material.

(I) (No change.)

(4) Non-regulated asbestos-containing materials (non-RACM) may be accepted for disposal at any municipal solid waste landfill provided the wastes are placed on the active working face and covered in accordance with this chapter. Under no circumstances may [shall] any material containing non-RACM be placed on any surface or roadway which is subject to vehicular traffic or

disposed of by any other means by which the material could be crumbled into a friable state.

(5) Empty containers which have been used for pesticides, herbicides, fungicides, or rodenticides must [shall] be disposed of in accordance with subparagraphs (A) and (B) of this paragraph.

(A) These containers may be disposed of at any landfill [site] provided that:

(i) the containers are triple-rinsed prior to receipt at the landfill [site];

(ii) the containers are rendered unusable prior to or upon receipt at the landfill [site]; and

(iii) (No change.)

(B) Those containers for which triple-rinsing is not feasible or practical (e.g., paper bags, cardboard containers) may be disposed of under the provisions of paragraph (6) of this subsection or in accordance with §330.137 of this title [(relating to Disposal of Industrial Wastes)], as applicable.

(6) Municipal hazardous waste from a conditionally exempt small quantity generator (CESQG) may be accepted at a Type I municipal solid waste landfill [site] without further approval

from the executive director provided the amount of waste does not exceed 220 pounds (100 kilograms) per month per generator, and provided the landfill owner or operator authorizes acceptance of [owner/operator is willing to accept] the waste.

(7) Sludge [Sludges], grease trap waste, grit trap waste, or liquid wastes from municipal sources can be accepted at a Type I municipal solid waste landfill for disposal only if the material has been, or is to be, treated or processed and the treated/processed material has been tested, in accordance with Test [the] Method 9095 (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication Number SW-846), as amended, and is certified to contain no free liquids. Prior to treatment or processing [process] of this waste at the landfill, the owner or operator shall submit written notification to the executive director of the liquids processing activity as required in §330.8 of this title [(relating to Notification Requirements)].

(c) Used oil filters from internal combustion engines must [shall] not be intentionally and knowingly accepted for disposal at landfills permitted under this chapter except as provided in paragraphs (1) and (2) [(1) - (4)] of this subsection.

(1) Used oil filters must [shall] not be offered for disposal by a generator and/or be intentionally and knowingly accepted for landfill disposal [on or after June 1, 1992,] unless the filter has been:

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

(2) Used oil filters (to include filters which have been crushed and/or processed to remove free-flowing used oil) must [shall] not be offered for landfill disposal by any non-household generator [specified as follows] and must [shall] not be intentionally or knowingly accepted by any landfill permitted and regulated under this chapter, [as follows:]

[(A) on or after August 1, 1992, by any non-household generator located in a county with a population greater than one million;]

[(B) on or after October 1, 1992, by any non-household generator located in a county with a population greater than 200,000 which is located on or east of a line defined by Interstate Highways 37, 35, and 35W;]

[(C) on or after December 1, 1992, by any non-household generator located in a county with a population greater than 200,000;]

[(D) on or after February 1, 1993, by any non-household generator located in a county with a population greater than 100,000 which is located on or east of a line defined by Interstate Highways 37, 35, and 35W;]

[(E) on or after April 1, 1993, by any non-household generator located in a

county with a population greater than 50,000 which is located on or east of a line defined by Interstate Highways 37, 35, and 35W;]

[(F) on or after June 1, 1993, by any non-household generator located in a county with a population greater than 100,000;]

[(G) on or after August 1, 1993, by any non-household generator located in a county with a population greater than 50,000;]

[(H) on or after October 1, 1993, by any non-household generator located in a county located on or east of a line defined by Interstate Highways 37, 35, and 35W; and]

[(I) on or after December 1, 1993, by any non-household generator located in any county of the state.]

[(3) On or after April 1, 1994, used oil filters shall not be offered for landfill disposal by any generator, and/or shall not be intentionally or knowingly accepted for landfill disposal by a landfill permitted under this chapter.]

[(4) The executive director may extend, in 60-day increments, the time periods specified in paragraphs (2)(A) - (I) or (3) of this subsection if the executive director finds that commercial waste services for collection and recycling of used oil filters are not available. The

extension may be limited to any county or group of counties as the executive director deems necessary.]

§330.137. Disposal of Industrial Wastes.

(a) All Class 1 industrial solid waste is required to be manifested. Owners or operators of municipal solid waste landfill (MSWLF) facilities shall not accept such wastes without prior written approval from the executive director and [or] specific authorization in the permit.

(b) Wastes which are Class 1 only because of asbestos content may be accepted at any Type I or Type I-AE MSWLF facility which is authorized to accept regulated asbestos-containing material (RACM) as stated in §330.136(b)(3)(I) of this title (relating to Disposal of Special Wastes). Authorization to accept this waste [such wastes] is implied in the authorization to accept RACM unless the acceptance of industrial wastes is prohibited by the permit. All Class 1 industrial asbestos wastes must [shall] be manifested and the owner or operator of the MSWLF facility shall comply with the requirements of subsections (g) - (i) of this section.

(c) Unless the facility permit authorizes the acceptance of a specified type of Class 1 industrial waste, an authorization to accept specific types of Class 1 wastes will be waste-specific and [and/or] site-specific and will be granted only to appropriate facilities [sites] that are operating in compliance with this chapter. Requests for authorization to accept Class 1 solid wastes must [shall] be submitted in writing to the executive director and must [shall] include, but are not limited to, the following:

(1) a complete description of the chemical and physical characteristics of the waste in accordance with §335.587 of this title (relating to Waste Analysis)[, a statement as to whether or not the waste is a hazardous waste as defined in §330.2 of this title (relating to Definitions), and the quantity and rate at which the waste is produced and/or the expected frequency of disposal];

(2) an operational plan containing the proposed procedures for handling the waste and a listing of required protective equipment for operating personnel and on-site emergency equipment. This plan must [shall] become a part of the site operating plan; and

(3) a written contingency plan meeting the requirements of §335.589 of this title (relating to Contingency Plan). [outlining responsibility for containment and cleanup of any accidental spills occurring during the delivery and/or disposal operation.] This plan shall become a part of the site operating plan.

(d) Class 1 industrial solid waste other than asbestos-containing waste must not be placed above the surrounding natural ground surface elevation. Class 1 industrial solid waste which is Class 1 only because of asbestos content must be managed in accordance with the provisions of §330.136(b)(3) of this title (relating to Disposal of Special Wastes).

[(d) Facilities which accept Class 1 wastes, other than asbestos-containing material, shall have dedicated trenches which meet the following requirements.]

[(1) The trenches designated for Class 1 wastes shall have a composite liner system consisting of two components. The upper component shall consist of a minimum of a 30-mil flexible membrane liner (FML) and the lower component shall consist of at least a three-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. FML components consisting of high density polyethylene (HDPE) shall be at least 60-mil thick. The FML component shall be installed in direct and uniform contact with the compacted soil component. The liner system installed for Class 1 trenches is subject to the requirements of §330.205 of this title (relating to Soils and Liner Quality Control Plan). These trenches shall be designated on the site development plan.]

[(2) The trenches designated for Class 1 wastes shall have a leachate-collection system designed and constructed to maintain less than a 30-cm depth of leachate over the liner. The leachate-collection and leachate-removal system shall be:]

[(A) constructed of materials that are chemically resistant to the leachate expected to be generated;]

[(B) of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill; and]

[(C) designed and operated to function through the scheduled closure and post-closure period of the landfill. The leachate-collection system design criteria and performance standards shall be, at a minimum, in accordance with the commission's most recent policy and guidelines on this

subject.]

[(3) Stormwater run-on/run-off facilities such as berms and ditches placed to protect the dedicated trench(es) shall be provided in accordance with §330.54 of this title (relating to Technical Requirements of Part III of the Application).]

[(4) The site shall have a groundwater monitoring system installed which is capable of detecting the migration of pollutants from the landfill and is sampled semiannually for the parameters specified in §§330.230 - 330.242 of this title (relating to Groundwater Monitoring and Corrective Action).]

[(5) The final cover placed over the dedicated Class 1 industrial waste trench shall consist of a minimum of 18 inches of uncontaminated topsoil overlying four feet of compacted clay-rich soil material meeting the requirements of §§330.250 - 330.256 of this title (relating to Closure and Post-Closure) unless waste is to be placed on top of the Class 1 wastes. If waste is to be placed above Class 1 wastes, the Class 1 waste shall first be covered with a four-foot layer of compacted clay-rich soil overlain by a composite liner and leachate collection system. The final cover over the aerial fill shall meet the requirements of §§330.250-330.256 of this title (relating to Closure and Post-Closure) and shall include a flexible membrane component.]

[(6) Class 1 industrial solid waste other than asbestos-containing waste shall not be placed above the surrounding natural ground surface elevation. Class 1 industrial solid waste which is

Class 1 only because of asbestos content shall be managed in accordance with the provisions of §330.136(b)(3) of this title (relating to Disposal of Special Wastes).]

~~(e)~~ [(f)] The executive director may issue an approval to receive Class I industrial solid waste without a written request from the owner or operator; however, in such cases the site operator is not required to accept the waste.]

~~(e)~~ [(f)] Unless specifically authorized by the facility permit, a Type I MSWLF facility permitted after October 9, 1993, may not accept Class 1 industrial nonhazardous wastes in excess of 20% of the total amount of waste (not including Class 1 wastes) accepted during the current or previous year. The amount of waste may be determined by volume or by weight, but the same unit of measure must [shall] be used for each year, unless a variance is authorized by the executive director.

~~(f)~~ [(g)] Any authorization to accept [a] Class 1 waste is subject to the site operating in compliance with these rules and any specific conditions required under any letter(s) of authorization. Failure to operate the site in compliance with these rules or any special conditions imposed by the executive director may result in revocation of [shall be justifiable grounds for the executive director to revoke] the authorization to accept a Class 1 waste.

~~(g)~~ [(h)] All shipments of [a] Class 1 waste must [shall] be accompanied by a manifest (waste-shipping control ticket) as required by the commission. The facility operator or his designated representative shall sign the manifest for any authorized shipments of Class 1 waste. The facility

operator shall not accept or sign for shipments of Class 1 waste for which the authorization to accept has not been granted by the executive director or has not been authorized by permit provisions. The facility [site] operator shall retain the disposal facility copy of the manifest for a period of three years. This time period is automatically extended if any enforcement action involving the owner, operator, or MSWLF facility is initiated or pending by the executive director.

(h) [(i)] A facility which accepts any Class 1 waste must [shall] submit to the executive director a written report of Class 1 waste received. This report must [shall] be submitted no later than the 25th day of the month following the month in which the waste was received. Reports must [shall] be submitted on forms provided by the commission and must [shall] include all information required. Monthly reports must [shall] be submitted [filed] by facilities which have received Class 1 wastes including those months in which no Class 1 waste is received at the facility unless an exception is granted by the executive director. Failure to submit the [file such] reports required by this subsection in a timely manner is [shall constitute] a violation of these rules.

(i) [(j)] Class 2 industrial solid waste, except special wastes as defined in §330.2 of this title [(relating to Definitions)], may be accepted at any Type I or Type I-AE municipal solid waste landfill provided the acceptance of this [such] waste does not interfere with facility [site] operation.

(j) [(k)] Class 3 industrial solid waste may be disposed of at any municipal solid waste landfill provided the acceptance of this [such] waste does not interfere with facility [site] operation.

§330.138. Visual Screening of Deposited Waste.

Visual screening [Screening] of deposited waste materials at a municipal solid waste facility must [shall] be provided by the owner or operator for the facility where the executive director determines that [a need for such] screening is necessary or where permit or design requirements so dictate.

SUBCHAPTER F: OPERATIONAL STANDARDS FOR SOLID WASTE LAND DISPOSAL

§330.118

STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; Texas Health and Safety Code, §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; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste.

The repeal implements Texas Health and Safety Code, §361.024 and §361.061.

§330.118. Hours of Operation.

**SUBCHAPTER H: GROUNDWATER PROTECTION DESIGN
AND OPERATION**

§330.200

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; Texas Health and Safety Code, §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; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste.

The amendment implements Texas Health and Safety Code, §361.024 and §361.061.

§330.200. Design Criteria.

(a) New municipal solid waste landfill facility (MSWLF) units and lateral expansions must [shall] be constructed in accordance with one of the two following provisions approved by the executive director:

(1) (No change.)

(2) a composite liner, as defined in subsection (b) of this section, and a leachate collection system that is designed and constructed to maintain less than a 30-centimeter [30-cm] depth of leachate over the liner.

(b) For purposes of this section, "composite liner" means a system consisting of two components; the upper component must consist of a minimum 30-mil flexible membrane liner (FML) and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} centimeters per second (cm/sec) [cm/sec]. FML components consisting of high density polyethylene (HDPE) must [shall] be at least 60-mil thick. The FML component must be installed in direct and uniform contact with the compacted soil component.

(c) When approving a design that complies with subsection (a)(1) of this section, the executive director may consider, but is not limited to, [at least] the following factors:

(1) - (3) (No change.)

(d) For purposes of this section, the relevant point of compliance is defined in §330.2 of this title (relating to Definitions). In determining the relevant point of compliance, the executive director may consider, but is not limited to, [at least] the following factors:

(1) - (2) (No change.)

(3) the quantity, quality, and direction [detection] of flow of groundwater;

(4) - (8) (No change.)

(e) Type IV landfills authorized to dispose of brush and demolition materials only must [shall] meet one of the following groundwater protection requirements listed in paragraph (1) or (2) of this subsection, and in addition all Type IV sites must [shall] have a soils and liner quality control plan (SLQCP) as described in paragraph (3) of this subsection.

(1) There must [shall] exist at least four feet of in-situ soil between the deposited waste and groundwater. This in-situ soil must [shall] constitute an in-situ liner and must [shall] meet all the physical properties for a constructed liner as detailed in §330.205(c)(6) of this title (relating to Soils [Soil] and Liner Quality Control Plan). In-situ liners must [shall] not exhibit primary or secondary physical features such as jointing, fractures, bedding planes, solution cavities, root holes, desiccation shrinkage cracks etc., that have a coefficient of permeability greater than 1×10^{-7} cm/sec.

(2) There must [shall] be at least a three-foot thick compacted clay liner between the deposited waste and groundwater. The constructed liner must [shall] meet all the criteria detailed in §330.205 of this title [(relating to Soil and Liner Quality Control Plan)] and must [shall] at a minimum have one foot of protective cover overlying the compacted liner after all quality control testing and final thickness determinations are complete.

(3) All Type IV landfill permits must [shall] include a SLQCP [soils and liner quality control plan (SLQCP)] as required by §330.205 of this title [(relating to Soil and Liner Quality Control Plan)] and should follow the latest technical guidelines of the executive director. The owner or operator shall submit soils and liner evaluation reports [(SLERs)] in accordance with §330.206 of this title (relating to Soils and Liner Evaluation Report (SLER) and Flexible Membrane Liner Evaluation Report (FMLER)).

(f) MSWLF facilities that accept Class 1 wastes, other than asbestos-containing material, must have dedicated trenches which meet the following requirements.

(1) The trenches designated for Class 1 wastes must have a composite liner system consisting of two components. The upper component must consist of a minimum of a 30-mil FML and the lower component must consist of at least a three-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. FML components consisting of HDPE must be at least 60-mil thick. The FML component must be installed in direct and uniform contact with the compacted soil component. The liner system installed for Class 1 trenches is subject to the requirements of §330.205 of this title. These trenches must be designated on the site development plan.

(2) The trenches designated for Class 1 wastes must have a leachate-collection system designed and constructed to maintain less than a 30-cm depth of leachate over the liner. The leachate-collection and leachate-removal system must be:

(A) constructed of materials that are chemically resistant to the leachate expected to be generated;

(B) of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill; and

(C) designed and operated to function through the scheduled closure and post-closure period of the landfill. The leachate-collection system design criteria and performance standards must be, at a minimum, in accordance with the commission's most recent policy and guidelines on this subject.

(3) Storm water run-on/run-off facilities such as berms and ditches placed to protect the dedicated trench(es) must be provided in accordance with §330.54 of this title (relating to Technical Requirements of Part III of the Application).

(4) The facility must have a groundwater monitoring system installed that is capable of detecting the migration of pollutants from the landfill and is sampled semiannually for the parameters specified in Subchapter I of this chapter (relating to Groundwater Monitoring and Corrective Action).

(5) The final cover placed over the dedicated Class 1 industrial waste trench must consist of a minimum of 18 inches of uncontaminated topsoil overlying four feet of compacted clay-rich soil material meeting the requirements of Subchapter J of this chapter (relating to Closure and Post-

Closure) unless waste is to be placed on top of the Class 1 wastes. If waste is to be placed above Class 1 wastes, the Class 1 waste must first be covered with a four-foot layer of compacted clay-rich soil. The final cover over the aerial fill must meet the requirements of Subchapter J of this chapter and must include a flexible membrane component.

(6) Class 1 industrial solid waste other than asbestos-containing waste must not be placed above the surrounding natural ground surface elevation. Class 1 industrial solid waste which is Class 1 only because of asbestos content must be managed in accordance with the provisions of §330.136(b)(3) of this title (relating to Disposal of Special Wastes).