

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §330.57 and §330.59.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

This rulemaking would add signage requirements for new municipal solid waste (MSW) permits and major amendments, and would increase the distance that mailed notice is provided for certain actions relating to MSW permits and registrations. Both measures are designed to increase the likelihood that potentially affected parties will be informed that a new MSW facility or a change to an existing MSW facility is being proposed. Currently, identification of property ownership within 500 feet of an MSW facility in the form of a land ownership map and landowner's list is required in MSW permit or registration applications. When public notice is required for MSW permit or registration actions, the mailing list includes persons identified on the adjacent and potentially affected landowners list and landownership map described in §330.59. The proposed change to the designated distance for the land ownership map and landowners list revises the distance requirements for public notice. The rulemaking also would require that applicants post signs at the facility stating that a new permit application or a major amendment application for an existing permit has been submitted, and the rule would specify requirements on sign placement and information shown on the signs.

Concurrent with this rulemaking, the commission proposes amendments to 30 TAC Chapter 305, Consolidated Permits, to revise the procedures for requesting certain major amendments to permits and to revise notice requirements for some permit and registration modifications.

SECTION BY SECTION DISCUSSION

The commission proposes to amend §330.57(i) and §330.59(c)(3) in Subchapter B, Permit and Registration Application Procedures.

Section 330.57, Permit and Registration Applications for Municipal Solid Waste Facilities

The commission proposes to amend §330.57(i) to reflect that applicability no longer applies only to internet postings.

The commission proposes to amend §330.57(i)(1) to clarify that application placement on the internet is to be concurrent with submittal of the application.

The commission proposes to add §330.57(i)(3) to require that applicants for new permits or major amendments post signage at the facility within 30 days of the executive director's receipt of the application, and to provide requirements for information to be posted on the sign. The commission determined that potentially affected parties may be outside the area for mailed notice or may not routinely read published notices in the newspaper and could be unaware of a proposed permit action. The new requirement will better ensure that all persons have an opportunity to comment or obtain information regarding MSW activities being proposed in the community.

The commission proposes to add §330.57(i)(4) to provide requirements for sign placement along highways or roads bordering the facility. The commission has determined that a requirement for signage at intervals no greater than 1,500 feet would be an effective yet simple method of providing notice.

The commission proposes to add §330.57(i)(5) to require that signs be posted in an alternative language when existing regulations require that an applicant publish notice in an alternative language.

The commission proposes to add §330.57(i)(6) to allow applicants to provide public notice in an alternative manner. The rule would provide flexibility to the applicant and the executive director in considering other proposals when the method prescribed in rule is not practical for circumstances or conditions at the facility.

Section 330.59, Contents of Part I of the Application

The commission proposes to amend §330.59(c)(3)(A) to change an existing requirement that permit and registration applications contain a map showing property ownership within 500 feet, to require a map identifying property ownership within 1/4 mile of the facility.

The commission proposes to amend §330.59(c)(3)(B) to change an existing requirement that permit and registration applications contain a list with the name and mailing address of property owners and mineral interest ownership within 500 feet, to require a list identifying property and mineral interest ownership within 1/4 mile of the facility.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, fiscal implications, although not expected to be significant, are anticipated for the agency as a result of administration or enforcement of the proposed rules. The proposed rules would require signage be posted at facilities submitting applications for new MSW permits or major amendments to permits. The proposed rules also would expand the required distance for mailed notice from 500 feet to one-quarter mile. The agency expects that requiring more signs and more public

notice could require more public meetings, increase workload to provide more public notices, and increase agency postage costs. However, the agency plans to use existing resources to meet these demands. Local governments that own or operate MSW facilities are also expected to experience an increase in costs associated with public notice and signage requirements of the proposed rules.

The proposed rulemaking would amend sections of Chapter 330 along with amending sections of Chapter 305. Fiscal implications for proposed amendments to Chapter 305 are addressed in a separate fiscal note. This fiscal note addresses matters pertaining to Chapter 330.

Current rules do not require signage for applications regarding new permits or major amendments to permits. The proposed rulemaking would add a requirement that signage be posted at facilities submitting applications for new MSW permits or major amendments to permits to identify that a permitting action is in progress. Signs would have to be posted every 1,500 feet of road frontage. The proposed rulemaking also would expand the distance currently required for mailed public notice for MSW permits, registrations, or modifications that require notice from 500 feet to one-quarter mile of a facility.

Based on history, seven local governments are expected to submit new MSW permit applications or applications for major amendments each year. The road frontage of a facility will affect the total cost a local government pays for signage. This fiscal note assumes that road frontage will total 1,500 feet and that one sign would have to be posted. Sign costs are estimated to range from \$1,000 to \$3,000 per sign. Statewide signage costs could be as much as \$7,000 to \$21,000 per year for local governments, and during the first five years the rules are in effect, signage costs are estimated to range from \$35,000 to \$105,000.

The costs of public notices vary widely across the state but could increase to \$1,000 to \$5,000 per notice under the proposed rules. Based on historical trends, staff estimates that as many as 30 local governments could submit applications for modifications to MSW permits or registrations each year. Assuming that public notice costs under current rules range from \$500 to \$2,000 per notice and that each of the 30 local governments submit one modification affected by the proposed rules, statewide public notice costs for local governments could increase as much as \$500 to \$3,000 per notice. Statewide annual costs are estimated to range from \$15,000 to \$90,000 which over a five year period would total \$75,000 to \$450,000.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be increased public awareness of MSW applications and continued protection of public health and safety.

Privately owned MSW facilities submitting applications for new MSW permits or major amendments to permits will be required to post signage regarding the application that is not required under current rules. They will also be required to provide public notice to more people for MSW permit and registration modifications.

Based on history, seven privately owned facilities are expected to submit new MSW permit applications and applications for major amendments each year. Staff estimates that as many as 30 privately owned facilities could submit applications for modifications to MSW permits or registrations each year. Based

on the same assumptions for signage and public notice costs used for local governments, privately owned facilities could see signage cost increase as much as \$1,000 to \$3,000 per sign and public notice costs could increase as much as \$500 to \$3,000 per notice. Statewide, annual costs for signage are estimated to range from \$7,000 to \$21,000, and increased annual costs for public notices are estimated to range from \$15,000 to \$90,000.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Staff estimates that three small businesses per year may be affected by the signage requirements of the proposed rules and that six per year may be affected by the public notice requirements. Small businesses could see signage cost increase as much as \$1,000 to \$3,000 per sign and public notice costs could increase as much as \$500 to \$3,000 per notice.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The purpose of the proposed rules is to provide information to an increased number of potentially affected parties that a permitting action is in progress regarding applications for new MSW permits, permit major amendments, or permit or registration modifications. Therefore, there are no alternative methods of achieving the purpose of the rulemaking if a small business submits an application for a new MSW permit, a major amendment, or modification to an existing permit. A small business could elect not to take any action requiring a new MSW permit, major amendment, or a modification to an existing permit or registration and thus avoid adverse impacts of the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed 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 specific intent of the proposed rulemaking is to increase the likelihood that potentially affected parties will be informed that a new MSW facility or a change to an existing MSW facility is being proposed. This will be done by adding signage requirements for new MSW permits and major amendments, and by increasing the distance that mailed notice is provided for certain actions relating to MSW permits and registrations. It is not anticipated that the proposed rulemaking will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that this proposed rulemaking does not meet the definition of major environmental rule.

Furthermore, even if the proposed rulemaking did meet the definition of a major environmental rule, the proposed rulemaking 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). Texas Government Code, §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 rulemaking does not meet any of these requirements. First, there are no applicable federal standards for signage for new MSW permits or registrations. Second, the proposed rulemaking does not exceed an express requirement of state law in Texas Health and Safety Code (THSC), §§361.0641, 361.0665, and 361.079. Third, there is no delegation agreement that would be exceeded by the proposed rulemaking. Fourth, the commission proposes this rulemaking under the specific authority of THSC, §361.079. This rulemaking is also proposed under the authority of THSC, §§361.011, 361.017, 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 this rulemaking solely under the commission's general powers.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rulemaking and performed an assessment of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rulemaking is to increase the likelihood that potentially affected parties will be informed that a new MSW facility or a change to an existing MSW facility is being proposed. The proposed rulemaking would substantially advance this stated purpose by adding signage requirements for new MSW permits and major amendments, and by increasing the distance that mailed notice is provided for certain actions relating to MSW permits and registrations.

Promulgation and enforcement of this proposed rulemaking would be neither a statutory nor a constitutional taking of private real property because the rulemaking does not affect real property.

There are no burdens imposed on private real property. In addition, the proposed rulemaking does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, this proposed 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 the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), 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 may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on January 8, 2008, at 10:00 a.m. at the Texas Commission on Environmental Quality Complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Patricia Duron, Office of Legal Services, at (512) 239-6087. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Patricia Duron, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512)

239-4808. Electronic comments may be submitted at <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2007-001-305-PR. The comment period closes January 15, 2008.

Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Jeff Davis, MSW Permits Section at (512) 239-6228.

SUBCHAPTER B: PERMIT AND REGISTRATION APPLICATION PROCEDURES

§330.57, §330.59

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; Texas Health and Safety Code (THSC), §361.011, which establishes the commissions 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; THSC, §361.024, which provides the commission with rulemaking authority; and THSC, §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 proposed amendments implement THSC, §361.002, Policy and Findings; THSC, §361.011, Commission's Jurisdiction, Municipal Solid Waste; THSC, §361.024, Rules and Standards and THSC, §361.061, Permits. The proposed amended sections also implement TWC, §5.103, Rules.

§330.57. Permit and Registration Applications for Municipal Solid Waste Facilities.

(a) Permit application. The application for a municipal solid waste facility is divided into Parts I - IV. Parts I - IV of the application shall be required before the application is declared administratively complete in accordance with Chapter 281 of this title (relating to Applications Processing). The owner or operator shall submit a complete application, containing Parts I - IV, before a hearing can be conducted

on the technical design merits of the application. An owner or operator applying for a permit may request a land-use only determination. If the executive director determines that a land-use only determination is appropriate, the owner or operator shall submit a partial application consisting of Parts I and II of the application. The executive director may process a partial permit application to the extent necessary to determine land-use compatibility alone. If the facility is determined to be acceptable on the basis of land use, the executive director will consider technical matters related to the permit application at a later time. When this procedure is followed, an opportunity for a public hearing will be offered for each determination in accordance with §39.419 of this title (relating to Notice of Application and Preliminary Decision). A complete application, consisting of Parts I - IV of the application, shall be submitted based upon the results of the land-use only public hearing. Owners or operators of Type IAE and Type IVAE municipal solid waste landfill units are required to submit all parts of the application except for those items pertaining to Subchapters H and J of this chapter (relating to Liner System Design and Operation; and Groundwater Monitoring and Corrective Action). Owners or operators of Type IAE and Type IVAE municipal solid waste landfill units are exempt from the geology report requirements of §330.63(e) of this title (relating to Contents of Part III of the Application) except for the requirement to submit a soil boring plan in accordance with §330.63(e)(4) and (e)(4)(A) of this title, and the information requested in §330.63(e)(6) of this title.

(b) Registration application. A registration application for a municipal solid waste facility is also divided into Parts I - IV, but is not subject to a hearing request or to the administrative completeness determinations of Chapter 281 of this title.

(c) Parts of the application.

(1) Part I of the application consists of the information required in §281.5 of this title (relating to Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits), §305.45 of this title (relating to Contents of Application for Permit) and §330.59 of this title (relating to Contents of Part I of the Application).

(2) Part II of the application describes the existing conditions and character of the facility and surrounding area. Part II of the application shall consist of the information contained in §330.61 of this title (relating to Contents of Part II of the Application). Parts I and II of a permit application must provide information relating to land-use compatibility under the provisions of Texas Health and Safety Code, §361.069. Part II may be combined with Part I of the application or may be submitted as a separate document. An owner or operator must submit Parts I and II of the permit application before a land-use determination is made in accordance with subsection (a) of this section.

(3) Part III of the application contains design information, detailed investigative reports, schematic designs of the facility, and required plans. Part III shall consist of the documents required in §330.63 of this title.

(4) Part IV of the application contains the site operating plan that shall discuss how the owner or operator plans to conduct daily operations at the facility. Part IV shall consist of the documents required in §330.65 of this title (relating to Contents of Part IV of the Application).

(d) Required information. The information required by this subchapter defines the basic

elements for an application. All aspects of the application and design requirements must be addressed by the owner or operator, even if only to show why they are not applicable for that particular site. It is the responsibility of the applicant to provide the executive director data of sufficient completeness, accuracy, and clarity to provide assurance that operation of the site will pose no reasonable probability of adverse effects on the health, welfare, environment, or physical property of nearby residents or property owners. Failure of the owner or operator to provide complete information as required by this chapter may be cause for the executive director to return the application without further action in accordance with §281.18 and §281.19 of this title (relating to Applications Returned and Technical Review). Submission of false information shall constitute grounds for denial of the permit or registration application.

(e) Number of copies.

(1) Applications shall be initially submitted in four copies. The owner or operator shall furnish up to 18 additional copies of the application for use by required reviewing agencies, upon request of the executive director.

(2) For permit applications initially submitted to the executive director, the owner or operator shall also furnish Parts I and II, and any subsequent revisions to Parts I and II, to the regional council of governments.

(f) Preparation. Preparation of the application must conform with Texas Occupations Code, Texas Engineering Practice Act, Chapter 1001 and Texas Geoscience Practice Act, Chapter 1002.

(1) The responsible engineer shall seal, sign, and date the title page of each bound engineering report or individual engineering plan in the application and each engineering drawing as required by Texas Engineering Practice Act, §15c, and in accordance with 22 TAC §137.33 (relating to Sealing Procedures).

(2) The responsible geoscientist shall seal, sign, and date applicable items as required by Texas Geoscience Practice Act, §6.13(b), and in accordance with 22 TAC §851.156 (relating to Geoscientist's Seals).

(3) Applications that have not been sealed shall be considered incomplete for the intended purpose and shall be returned to the owner or operator.

(g) Application format.

(1) Applications shall be submitted in three-ring, "D"-ring, loose-leaf binders.

(2) The title page shall show the name of the project; the municipal solid waste permit application number, if known; the name of the owner and operator; the location by city and county; the date the part was prepared; and, if appropriate, the number and date of the revision. It shall be sealed as required by the Texas Engineering Practice Act.

(3) The table of contents shall list and give the page numbers for the main sections of the application. It shall be sealed as required by the Texas Engineering Practice Act.

(4) The narrative of the report shall be printed on 8-1/2 by 11 inches white paper.

Drawings or other sheets shall be no larger than 11 by 17 inches so that they can be reproduced by standard office copy machines.

(5) All pages shall contain a page number and date.

(6) Revisions shall have the revision date and note that the sheet is revised in the header or footer of each revised sheet. The revised text shall be marked to highlight the revision.

(7) Dividers and tabs are encouraged.

(h) Application drawings.

(1) All information contained on a drawing shall be legible, even if it has been reduced.

The drawings shall be 8-1/2 by 11 inches or 11 by 17 inches. Standard-sized drawings (24 by 36 inches) folded to 8-1/2 by 11 inches may be submitted or required if reduction would render them illegible or difficult to interpret.

(2) If color coding is used, it should be legible and the code distinct when reproduced on black and white photocopy machines.

(3) Drawings shall be submitted at a standard engineering scale.

(4) Each drawing shall have a:

(A) dated title block;

(B) bar scale at least one-inch long;

(C) revision block;

(D) responsible engineer's or geoscientist's seal, if required; and

(E) drawing number and a page number.

(5) Each map or plan drawing shall also have:

(A) a north arrow. Preferred orientation is to have the north arrow pointing toward the top of the page;

(B) a reference to the base map source and date, if the map is based upon another map. The latest published edition of the base map should be used; and

(C) a legend.

(6) Match lines and section lines shall reference the drawing where the match or section

is shown. Section drawings should note from where the section was taken.

(i) Posting application information [on internet].

(1) Upon submittal of an application, the [The] owner or operator shall provide a complete copy of any application that requires public notice, except for authorizations at Type IAE and Type IVAE landfill facilities, including all revisions and supplements to the application, on a publicly accessible internet Web site, and provide the commission with the Web address link for the application materials. This internet posting is for informational purposes only.

(2) The commission shall post on its Web site the identity of all owners and operators filing such applications and the Web address link required by this subsection.

(3) For applications for permits or major amendments, an owner or operator shall post notice signs at the facility within 30 days of the executive director's receipt of an application. Signs must:

(A) consist of dark lettering on a white background and must be no smaller than four feet by four feet with letters at least three inches in height and block printed capital lettering;

(B) identify as appropriate that the application is for a proposed permitted facility or an amendment to a permitted facility;

(C) include the words "for further information contact";

(D) include the words "Texas Commission on Environmental Quality," the Agency's Central Office address, the toll free telephone number for the Office of Public Assistance, and the Agency's Web site address;

(E) include the name and address of the owner or operator;

(F) include the telephone number of the owner or operator;

(G) remain in place and legible until the close of the public comment period on the permit or major amendment; and

(H) provide the rule or statutory citation that identifies that affected persons may request that the executive director and applicant conduct a public meeting.

(4) Signs must be located within ten feet of every property line bordering a public highway, street, or road. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs, shall be required along any property line parallel to a public highway, street, or road. This paragraph's sign requirements do not apply to properties under the same ownership that are noncontiguous or separated by intervening public highway, street, or road, unless the property is part of the registered facility.

(5) The owner or operator shall also post signs at the facility in an alternative language

when the alternative language requirements in §39.405(h)(2) of this title (relating to General Notice Provisions) are met.

(6) The executive director may approve variances from the requirements of paragraphs (3), (4), and (5) of this subsection if the owner or operator has demonstrated that it is not practical to comply with the specific requirements of those subparagraphs and alternative sign posting plans proposed by the owner or operator are at least as effective in providing notice to the public. Approval from the executive director under this subparagraph must be received before posting alternative signs for purposes of satisfying the requirements of this paragraph.

§330.59. Contents of Part I of the Application.

(a) General.

(1) Part I of the application consists of information that is required regardless of the type of facility involved. All items required by this section, §281.5 of this title (relating to Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits) and §305.45 of this title (relating to Contents of Application for Permit) must be submitted.

(2) Submittal of Part I by itself will not necessarily require publication of a notice of intent to obtain a municipal solid waste (MSW) permit under the provisions of Texas Health and Safety Code (THSC), §361.0665, or a notice concerning receipt of a permit application under the provisions of

THSC, §361.079.

(3) For a permit application, submittal of Part I only will not allow a permit application to be declared administratively complete under the provisions of THSC, §361.068; §281.3 of this title (relating to Initial Review); and §281.18 of this title (relating to Applications Returned).

(b) Facility location. The owner or operator shall:

(1) provide a description of the location of the facility with respect to known or easily identifiable landmarks;

(2) detail the access routes from the nearest United States or state highway to the facility;
and

(3) provide the longitudinal and latitudinal geographic coordinates of the facility.

(c) Maps.

(1) General. The maps submitted as a group shall show the elements contained in §305.45 of this title and the following:

(A) latitudes and longitudes; and

(B) the property boundary of the facility.

(2) General location maps. These maps shall be all or a portion of county maps prepared by Texas Department of Transportation (TxDOT). At least one general location map shall be at a scale of one-half inch equals one mile. If TxDOT publishes more detailed maps of the proposed facility area, the more detailed maps shall also be included in Part I. The latest revision of all maps shall be used.

(3) Land ownership map with accompanying landowners list.

(A) These maps shall comply with the requirements in §281.5 of this title by locating the property owned by adjacent and potentially affected landowners. The maps should show all property ownership within 1/4 mile [500 feet] of the facility, and all mineral interest ownership under the facility.

(B) The adjacent and potentially affected landowners' list shall be keyed to the land ownership maps and shall give each property owner's name and mailing address. The list shall comply with the requirements of §281.5 of this title, and shall include all property owners within 1/4 mile [500 feet] of the facility, and all mineral interest ownership under the facility. Property and mineral interest owners' names and mailing addresses derived from the real property appraisal records as listed on the date that the application is filed will comply with this paragraph. Notice of an application is not defective if property owners or mineral interest owners did not receive notice because they were not listed in the real property appraisal records. The list shall also be provided in electronic form.

(d) Property owner information. Property owner information shall include the following:

(1) the legal description of the facility;

(A) the legal description of the property and the county, book, and page number or other generally accepted identifying reference of the current ownership record;

(B) for property that is platted, the county, book, and page number or other generally accepted identifying reference of the final plat record that includes the acreage encompassed in the application and a copy of the final plat, in addition to a written legal description;

(C) a boundary metes and bounds description of the facility signed and sealed by a registered professional land surveyor; and

(D) drawings of the boundary metes and bounds description; and

(2) a property owner affidavit signed by the owner that includes the following:

(A) acknowledgment that the State of Texas may hold the property owner of record either jointly or severally responsible for the operation, maintenance, and closure and post-closure care of the facility;

(B) for facilities where waste will remain after closure, acknowledgment that the

owner has a responsibility to file with the county deed records an affidavit to the public advising that the land will be used for a solid waste facility prior to the time that the facility actually begins operating as a municipal solid waste landfill facility, and to file a final recording upon completion of disposal operations and closure of the landfill units in accordance with §330.19 of this title (relating to Deed Recordation); and

(C) acknowledgment that the facility owner or operator and the State of Texas shall have access to the property during the active life and post-closure care period, if required, after closure for the purpose of inspection and maintenance.

(e) Legal authority. The owner and operator shall provide verification of their legal status as required by §281.5 of this title. Normally, this shall be a one-page certificate of incorporation issued by the secretary of state. The owner or operator shall list all persons having over a 20% ownership in the proposed facility.

(f) Evidence of competency. Requirements for demonstrating evidence of competency are as follows.

(1) The owner or operator shall submit a list of all Texas solid waste sites that the owner or operator has owned or operated within the last ten years. The site name, site type, permit or registration number, county, and dates of operation shall also be submitted.

(2) The owner or operator shall submit a list of all solid waste sites in all states, territories, or countries in which the owner or operator has a direct financial interest. The type of site

shall be identified by location, operating dates, name, and address of the regulatory agency, and the name under which the site was operated.

(3) The executive director shall require that a licensed solid waste facility supervisor, as defined in Chapter 30 of this title (relating to Occupational Licenses and Registrations), be employed before commencing facility operation.

(4) The names of the principals and supervisors of the owner's or operator's organization shall be provided, together with previous affiliations with other organizations engaged in solid waste activities.

(5) For landfill permit applications only, evidence of competency to operate the facility shall also include landfilling and earthmoving experience if applicable, and other pertinent experience, or licenses as described in Chapter 30 of this title possessed by key personnel, and the number and size of each type of equipment to be dedicated to facility operation.

(6) For mobile liquid waste processing units, the owner or operator shall submit a list of all solid waste, liquid waste, or mobile waste units that the owner or operator has owned or operated within the past five years. The owner or operator shall submit a list of any final enforcement orders, court judgments, consent decrees, and criminal convictions of this state and the federal government within the last five years relating to compliance with applicable legal requirements relating to the handling of solid or liquid waste under the jurisdiction of the commission or the United States Environmental Protection Agency. Applicable legal requirement means an environmental law, regulation, permit, order, consent

decree, or other requirement.

(g) Appointments. The owner or operator shall provide documentation that the person signing the application meets the requirements of §305.44 of this title (relating to Signatories to Applications). If the authority has been delegated, provide a copy of the document issued by the governing body of the owner or operator authorizing the person that signed the application to act as agent for the owner or operator.

(h) Application fees.

(1) In accordance with §305.53 of this title (relating to Application Fee), the application fee for a permit, registration, amendment, modification, or temporary authorization is \$150.

(2) For a development permit or registration over a closed municipal solid waste landfill, THSC, §361.532, requires the Texas Commission on Environmental Quality (TCEQ) to charge an application fee equal to the actual cost of reviewing the application prior to the issuance of a development permit. The owner or operator shall submit an initial application fee of \$2,500 to be submitted in the form of a check or money order made payable to the TCEQ. Upon completion of the review process, including the public meeting, the executive director shall present the owner or operator with a refund for an overcharge, or an invoice for an undercharge.