The Texas Commission on Environmental Quality (commission) proposes an amendment to §328.4.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

House Bill (HB) 2541, 80th Legislature, Regular Session, 2007 requires the commission to establish rules regarding the size, content, and fire safety features for non-permitted and non-registered municipal solid waste (MSW) recycling facilities that store combustible materials to produce compost or mulch and are located in certain counties that have sole source aquifers and that have a population of more than 1.3 million. This bill also requires more stringent standards for facilities located over sole source aquifers. At present, Bexar County is the only county that satisfies the population and aquifer qualifiers contained within HB 2541. The effective date of the legislation was September 1, 2007. The bill further stipulates that rules implementing the requirements for these MSW recycling facilities must not become effective until the first anniversary of the adoption date of the new rules.

SECTION DISCUSSION

The commission proposes administrative changes throughout the proposed rule to insert and update cross-references.

The commission proposes to update cross-references in §328.4(a), (c), (d), and (f) to update incorrect chapter citations due to reorganization that occurred during a previous rulemaking.

The commission proposes to amend §328.4(a) to include cross-references to 30 TAC Chapter 330, Municipal Solid Waste and Chapter 332, Composting, to mirror the references contained in these chapters. These changes are administrative, intended to improve the ease of use and readability of this section.

The commission proposes §328.4(g) to implement the requirements of Texas Health and Safety Code, (THSC), §361.1191, Regulation of Certain Recycling Facilities in Certain Counties, as established by HB 2541 for Bexar County. This statutory change took effect September 1, 2007 and applies only to MSW recycling facilities that are not required to have permits or registrations; that store combustible materials to produce mulch or compost; and that are located in certain counties. These counties must have a population of more than 1.3 million and include areas designated as recharge or transition zones of an aquifer as defined under the commission's Edwards Aquifer Protection Program that is the sole or principle source of drinking water for an area under Section 1424(e), Safe Drinking Water Act of 1974 (42 United States Code, Section 300h-3(e)) and is designated by the United States Environmental Protection Agency (EPA) as the Edwards Underground Reservoir under 40 Federal Register 58344. The referenced EPA designation, published December 16, 1975, was only for areas found within Medina, Bexar, and Comal Counties. Of the three counties designated in 1975, only Bexar County has a present population greater than 1.3 million persons and is the only county presently affected by the new legislation. Travis County is not potentially affected by this legislation because the Austin-Area Edwards Aquifer was designated as a sole source of drinking water by the EPA at a later date, in 53 FR 20897 on June 7, 1988. As a result, Travis County is not within the 1975 designation. There are no applicable existing federal regulations. Municipalities, Bexar County, state and federal agencies, and persons affiliated with an MSW disposal permit who operate mulch and compost facilities located within Bexar County and were previously exempt from storage and processing limitations, recordkeeping, and reporting will now be subject to these requirements.

The commission proposes §328.4(g)(1) to establish an annual storage time limit applicable to all material at the facility as required by HB 2541. At least 90% of an equivalent amount of material received during

each year must leave the facility annually. The material removal requirement is intended to prevent sham recycling operations where profits are made primarily from money received on the incoming material in conjunction with an overall gross accumulation of material. The 90% removal requirement is intended to provide flexibility in facility operations to allow for slight seasonal or annual variations in the demand of recycled material. The 90% removal requirement could be documented by the owner or operator through such means as sales receipts of material purchased from the facility or shipping invoices for material leaving the facility.

The commission proposes §328.4(g)(2) to establish a maximum volume of combustible material to be stored at the facility as required by HB 2541. The maximum storage volume limitation will be established by the most current notice of intent to operate the facility. The storage limitation will apply to both processed and unprocessed combustible material.

The commission proposes §328.4(g)(3) to require combustible material stored by the facility to produce mulch or compost be ground to a particle size not to exceed 6 inches in any dimension no later than 90 days after receipt. While processed material is also combustible, unprocessed brush at mulch and compost sites represents the most immediate fire risk. Ground material is more likely to smoulder in a confined manner and can more easily be doused with water or cut away from a pile to prevent further spread of the fire. The commission proposes to allow an owner or operator to request executive director approval for additional time to grind combustible materials up to 180 days after receipt of the material, if conditions warrant. There may be limited circumstances, such as the initial startup of a facility, where it is not practical to grind materials within 90 days of receipt. This would allow the executive director to grant an extension to the processing time limit.

The commission proposes §328.4(g)(4) to establish individual pile size limits for combustible materials as required by HB 2541. The commission proposes that each pile shall not exceed 25 feet in height; that unprocessed combustible material shall not cover an area greater than 50,000 square feet at the facility, with no single pile exceeding 8,000 square feet; and that a pile of processed combustible material shall not cover an area greater than 25,000 square feet. The proposed height requirement for all piles reflects commission guidance on cotton gin trash and is recommended in Chapter 19, Section 1908 of the International Fire Code. The proposed maximum individual pile size area for unprocessed combustible material would limit the amount of material that could be engulfed in flames and is consistent with the requirements of §328.61, Design Requirements for Scrap Tire Storage Site. The 25,000 square feet limitation for processed material is consistent with Chapter 19, Section 1908 of the International Fire Code, except that the footprint of the pile was adjusted downward since internal pile temperature monitoring, automatic sprinkler systems, and portable fire extinguisher requirements of the code are not included in this proposal. The maximum individual pile size area for processed material would limit the impact of a smouldering fire to a manageable pile size and reflects commission guidance on cotton gin trash.

The commission proposes §328.4(g)(5) to establish a limit on the number of piles of combustible materials at a facility, as required by HB 2541. The commission proposes that the number of piles shall not exceed the maximum number specified by the operator in the notice of intent to operate the facility.

The commission proposes §328.4(g)(6) to require fire lanes between piles of combustible material as required by HB 2541. The commission proposes a minimum separation of 40 feet from piles of unprocessed combustible materials and 20 feet between piles of processed materials. The proposed rules

would allow narrower fire lanes adjacent to piles of processed materials since ground material is considered to represent a lesser fire risk than unprocessed brush. The commission proposes to require an all-weather road which encircles the area used for processing and storage of combustible material. This all-weather road must have minimum 25-foot turning radii, be capable of accommodating firefighting vehicles during wet weather, and meet applicable local requirements and specifications. The commission further proposes to require that there be open space between buildings and piles that be kept open at all times and maintained free of combustible material, rubbish, equipment, or other materials. The commission proposes to allow this distance to be increased as necessary to protect human health and safety upon coordination with the local fire marshal.

The commission proposes §328.4(g)(7) to require at least a 50-foot buffer zone between the facility boundary and areas receiving, processing, or storing material. This provision is intended implement HB 2541 by prohibiting these activities from being conducted within 50 feet of a residence, school, or church. This proposal is consistent with the set back distances required by §332.8, Air Quality Requirements, applicable to mulch and compost facilities.

The commission proposes §328.4(g)(8) to establish requirements for a water pollution abatement plan for facilities located on the recharge or transition zones of the Edwards Aquifer. HB 2541 requires more stringent standards for facilities located over the recharge or transition zone of the Edwards Aquifer. The commission proposes to require this plan to be consistent with the requirements of 30 TAC §213.5(b) concerning the Edwards Aquifer.

The commission proposes §328.4(g)(9) to require that by the effective date of this subsection for existing facilities or at least 90 days prior to commencing new operations, the owner or operator must file a notice

of intent in accordance with §328.5(b) that also includes provisions to demonstrate compliance with this subsection. This paragraph also requires that a revised notice of intent must be filed with the executive director before a facility exceeds the maximum amount of material specified in the current notice of intent. This provision makes it clear what actions are required and therefore will improve the inspection and enforcement process.

The commission proposes §328.4(g)(10) to require that the owner or operator of a facility subject to the requirements of this subsection maintain all records necessary to demonstrate compliance with this subsection. This provision makes it clear that records are required and therefore will improve the inspection and enforcement process.

The commission proposes §328.4(g)(11) to state that failure to operate and maintain a facility as proposed in the current notice of intent for the facility is a violation of this chapter. This provision makes it clear that storage of processed or unprocessed material in excess of the maximum volume of material or the maximum number of piles specified in the current notice of intent is a violation and therefore will improve the inspection and enforcement process.

The commission proposes §328.4(g)(12) to establish the effective date as required by HB 2541 that the rules must not become effective until the first anniversary of the date on which the rule was adopted.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, determined that, for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rule.

HB 2541, 80th Legislature, 2007 requires the commission to establish rules regarding the size, fire safety features, and other design and operational standards for certain types of MSW recycling facilities in counties that have sole source aquifers and a population of more than 1.3 million. This bill also requires more stringent standards for facilities located over sole source aquifers. At present, Bexar County is the only county that satisfies the population and aquifer qualifiers contained within HB 2541. The proposed rule implements the provisions of the legislation for Bexar County. In implementing the legislation, the proposed rule establishes annual storage time limits, establishes the maximum volume that can be stored at a facility, establishes limits for individual piles of combustible material, establishes fire lane requirements between piles of combustible materials, establishes a buffer zone between a facility and the facility's boundary, establishes recordkeeping requirements, and requires a water pollution abatement plan for facilities located on the recharge or transition zones of the Edwards Aquifer. The proposed rule is anticipated to reduce the likelihood of large, unmanageable fires at mulching and compost facilities in Bexar County that do not have permits or that are not registered.

The proposed rule is not expected to have a significant fiscal impact on the 31 towns and cities in Bexar County with MSW recycling facilities that might be affected. The rule is intended to reduce the risk of fire, which is expected to represent a cost savings to affected local governments by reducing the need for their services.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be the reduction of risk that large, unmanageable fires at mulching and compost facilities within Bexar County could occur.

Staff expects that there may be as many as three businesses impacted by the proposed rule. These businesses are considered to be small businesses, and the fiscal implications for these businesses can be found in the SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications are anticipated for small or micro-businesses in Bexar County as a result of the proposed rule. There may be as many as three businesses that may have to reduce pile size, expand fire lanes, or increase recordkeeping practices as a result of the proposed rule. Assuming that a mulch or compost facility is located on 20 acres, extra acreage required to be utilized because of pile size reduction and fire lane expansion could cost as much as $300,000 per year in reduced revenue for the first five years the proposed rule is in effect. Recordkeeping costs could total as much as $5,000 per year depending on whether the facility currently has an adequate recordkeeping system.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule is required to comply with state law and adequately protect citizens of Bexar County from fire risk at compost and mulching facilities.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS

The commission reviewed the proposed rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rule is not subject to §2001.0225 because it is not a "major environmental rule" and it does not meet any of the four criteria listed in the 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.

This proposal meets the first part of the definition to be considered a "major environmental rule" because it is intended to protect the environment and reduce risk to human health from environmental exposure. The proposal is intended to implement HB 2541, 80th Legislature, 2007, for certain counties. The provisions that are proposed would establish annual storage time limits, establish the maximum volume that can be stored at a facility, establish size limits for individual piles of combustible material, establish a requirement for fire lanes between piles of combustible materials, establish set back distances from a facility's boundary, establish recordkeeping requirements, and require a water pollution abatement plan for facilities located on the recharge or transition zones of the Edwards Aquifer. These provisions would apply to some facilities that are exempt from this subchapter under current THSC, §361.119 and §328.4(a) and §328.5(a). Adverse fiscal implications are anticipated for small or micro-businesses in Bexar County as a result of the proposed rule. There may be as many as three businesses that may have to reduce pile size, expand fire lanes, or increase recordkeeping practices as a result of the proposed rule. Because these adverse fiscal implications would only apply to a limited number of facilities in certain counties, the proposal is not expected 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 proposed rule does not meet the definition of a "major environmental" rule because it is not expected 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.

Furthermore, a regulatory impact analysis is not required, because the proposed rulemaking does not meet any of the four applicable requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) only applies to a major environmental 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 rule does not meet any of these applicability requirements. First, there are no standards set for these facilities by federal law and the proposal is specifically required by HB 2541, 80th Legislature, 2007. Second, the proposed rule does not exceed an express requirement of state law. THSC, §361.119 and §361.1191 authorize the commission to regulate recycling facilities, but there are no specific statutory requirements for recycling facilities that are exceeded by the proposed rule. Third, the rule does not exceed an express 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. Fourth, the commission does not propose the rule solely under the general powers of the agency, but rather under the authority of: THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the

management of MSW; §361.024, which provides the commission with rulemaking authority; §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; §361.119, which authorizes the commission to adopt rules to regulate recycling facilities as solid waste facilities; and §361.1191, which authorizes the commission to adopt rules addressing specific criteria for recycling facilities in certain counties. Therefore, the commission does not propose the adoption of the rule solely under the commission's general powers.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rule and performed an assessment of whether the proposed rule constitutes a taking under Texas Government Code, Chapter 2007. The specific intent of the proposed rule is to ensure that recyclable material does not create a nuisance or threaten or impair the environment or public health and safety. The proposal is intended to implement HB 2541, 80th Legislature, 2007, which requires the commission to establish rules regarding the size, fire safety features, and other design and operational standards for certain types of MSW recycling facilities in certain counties. The proposed rule implements the provisions of the legislation for Bexar County.

The proposed provisions for Bexar County would establish: annual storage time limits, the maximum volume that can be stored at a facility, limits for individual piles of combustible material, requirements for fire lanes between piles of combustible materials, buffer zones from a facility’s boundary, recordkeeping requirements, and a requirement for a water pollution abatement plan for facilities located on the recharge

or transition zones of the Edwards Aquifer. The proposed rule is intended to reduce the likelihood of large unmanageable fires at mulching and compost facilities in Bexar County.

The proposed rule substantially advances these purposes by amending specific provisions in Chapter 328. The proposed rule provides a benefit to society by protecting the environment, public health, and safety. The provisions relate to reporting and operational requirements for recycling facilities and do not impose a burden on a recognized real property interest and therefore do not constitute a taking.

The promulgation of the proposed rule is neither a statutory nor a constitutional taking of private real property by the commission. Specifically, the proposed rule does not affect a landowner's rights in a recognized private real property interest because this rulemaking neither: burdens (constitutionally) or restricts or limits the owner's right to the property that would otherwise exist in the absence of this rulemaking; nor would it reduce its value by 25% or more beyond that value which would exist in the absence of the proposed rules. Therefore, the proposed rule will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in San Antonio on April 28, 2008, at 2:00

p.m., at the Alamo Area Council of Governments, 8700 Tesoro Drive, Al J. Notzon Board Room #100. 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 prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact the Commission's Office of Public Assistance at (512) 239-4000. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Michael Parrish, 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 2007-044-328-PR. The comment period closes May 5, 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 Wayne Harry, Municipal Solid Waste Permits Section, at (512) 239-6619.

SUBCHAPTER A: PURPOSE AND GENERAL INFORMATION

§328.4

STATUTORY AUTHORITY

The amendment is proposed under THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; THSC, §361.024, which provides the commission with rulemaking authority; 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; THSC, §361.119, which authorizes the commission to adopt rules to regulate recycling facilities as solid waste facilities; and THSC, §361.1191, which authorizes the commission to adopt rules addressing specific criteria for recycling facilities in certain counties.

The proposed amendment implements THSC, §361.119, Regulation of Certain Facilities as Solid Waste Facilities, and THSC, §361.1191, Regulation of Certain Recycling Facilities in Certain Counties.

§328.4. Limitations on Storage of Recyclable Materials.

(a) The provisions of subsections (e) and (f) of this section are available to all recycling facilities. In accordance with §§330.11(e)(2), 332.3(d), and 332.23(5) of this title (relating to Notification Required; Applicability; and Operational Requirements), in [In] order to be exempt from the registration and permit requirements under Chapter 330 [§330.4(f)(1)(B)] of this title (relating to Municipal Solid Waste [Permit Required]) or under Chapter 332 of this title (relating to Composting), a facility must comply with the requirements of this section unless:

(1) the owner or operator of the facility is a local government or an agency of the state or the federal government;

(2) the facility receives more than 50% of its recyclable material directly from any combination of generators not affiliated with the facility, from the public, or from haulers not affiliated with the facility; the facility receives no financial compensation to accept any of the recyclable material it receives; and the facility accumulating the recyclable material can show that the material is potentially recyclable and has an economically feasible means of being recycled; or

(3) the facility smelts recyclable metals or the facility is a secondary metals recycling facility affiliated with a smelter of recyclable metals, including the operations conducted and materials handled at the facility, provided that the owner or operator of the facility demonstrates that:

(A) the primary function of the facility is to process materials that have a resale value greater than the cost of processing the materials for subsequent beneficial use; and

(B) all the solid waste generated from processing the materials is disposed of in a solid waste facility authorized under Texas Health and Safety Code, Chapter 361 (concerning the Solid Waste Disposal Act), with the exception of small amounts of solid waste that may be inadvertently and unintentionally disposed of in another manner;

(4) the facility is owned or operated by, or affiliated with, a person who holds a permit to dispose of municipal solid waste.

(b) Recyclable material may be accumulated or stored at a recycling facility only under the following conditions:

(1) the facility accumulating it can show that the material is potentially recyclable and has an economically feasible means of being recycled;

(2) within 270 days after the effective date of this rule, or 270 days from the commencement of a new facility's operations, the amount of material recycled, or transferred to a different site for recycling, equals at least 25% by weight or volume of the material accumulated 90 days from the effective date of this rule or 90 days from the commencement of a new facility's operation; and

(3) during each subsequent six-month period, the amount of material that is recycled, or transferred to a different site for recycling, equals at least 50% by weight or volume of the material accumulated at the beginning of the period.

(A) In calculating the percentage of turnover, the percentage requirements are to be applied to each material of the same type.

(B) For the purposes of this section, the following materials shall not be considered to be accumulated, but shall be considered to be recycled, as long as they have been contained, covered, or otherwise managed to protect them from degradation, contamination, or loss of value as recyclable material:

(i) materials for mulching and composting facilities that have been ground for use as mulch, or compost, or prepared and placed in a windrow, static pile, or vessel for composting; or

(ii) materials for other recycling facilities that have been processed for recycling.

(c) A recycling facility that fails to comply with the requirements of this section shall be required, if the executive director so requests in writing, to obtain a permit or registration as a municipal solid waste facility under the provisions of Chapter 330 or Chapter 332 [§330.4] of this title. A facility that receives large quantities of materials as a result of a disaster or other circumstance beyond its control, and a mulching or composting facility that must accumulate a certain volume of materials in order to obtain grinding services from a contractor may not be subject to one or more of the requirements of subsection (b) of this section as determined by the executive director on a case-specific basis for a specified period of time as provided for in subsection (e) of this section.

(d) A facility that processes recyclable material that contains more than incidental amounts of non-recyclable waste must obtain a permit or registration as applicable under Chapter 330 or Chapter 332 [§330.4] of this title unless the executive director approves its request for alternative compliance.

(e) The executive director will use the following procedures in evaluating applications for alternative compliance with the standards in the definition of "Incidental amount(s) of non-recyclable waste" in §328.2 of this title (relating to Definitions) or with the requirements of subsection (b) of this section.

(1) The applicant must apply in writing to the executive director for the alternative compliance. The application must address the relevant criteria contained in subsection (f) of this section.

(2) The executive director will evaluate the application and issue a letter granting or denying the application. Any person affected by the decision of the executive director may file with the chief clerk a motion to overturn according to the procedures set out in §50.139(b) - (g) of this title (relating to Motion to Overturn Executive Director's Decision). The executive director may revoke an alternative compliance for good cause.

(f) The executive director may grant requests for alternative compliance if the applicant submits sufficient documentation demonstrating that the applicant cannot meet the requirements in the definition of "Incidental amount(s) of non-recyclable waste" in §328.2 of this title without affecting the ability to support related recycling activities. Failure to qualify for alternative compliance will subject the applicant to the permitting or registration requirements of Chapter 330 or Chapter 332 [§330.4] of this title. The executive director's decision will be based on the following factors:

(1) whether the application is for a single facility or for facilities of a similar type recycling the same kind of material;

(2) the locations of all facilities to be covered by the alternative compliance;

(3) the type(s) of material(s) accepted for recycling;

(4) any storage of materials prior to recycling;

(5) how the material(s) are recycled;

(6) the amount of and reasons for unavoidable damage to incoming material during collection, unloading, and sorting that renders the material unmarketable;

(7) reasons that data on tramp or damaged materials cannot be separated from data on other non-recyclable waste;

(8) reasonable efforts used at the facility or facilities to maintain and enforce source-separation, or reasons why source-separation cannot be practicably maintained and enforced at the facility or facilities;

(9) the amount and type of non-recyclable waste disposed of by the facility or facilities, the method of disposal, and the amount of time between receiving the waste and disposal;

(10) the prevalence of the practice on an industry-wide basis, or on the basis of other similar facilities recycling the same kind of material;

(11) reasons why alternative compliance would be protective of the environment and human health and safety; and

(12) other relevant factors.

(g) A municipal solid waste recycling facility that produces mulch or compost that is not required to have a permit or registration that stores combustible materials and is located in Bexar County shall comply with the following requirements of this subsection. This subsection applies to facilities that are exempt from other requirements of this section as provided in subsection (a) of this section.

(1) Storage time limits of all material. An amount equal to at least 90% by weight of all materials received during the previous year must be removed from the facility annually during each subsequent year.

(2) Maximum volume of combustible material. A facility shall not store processed or unprocessed combustible material in excess of the maximum volume of material indicated in the current notice of intent to operate the facility submitted to the executive director.

(3) Time limits for processing. All combustible material stored by the facility to produce mulch or compost must be ground to an initial particle size not to exceed 6 inches in any dimension no later than 90 days after receipt. Material will not be considered processed until it is ground to a particle size of 6 inches or less in any dimension. Under certain circumstances, an owner or operator may request executive director approval for additional time to grind combustible materials up to 180 days after receipt of the material.

(4) Pile size limits. Each pile of combustible material shall have dimensions not to exceed 25 feet in height. Unprocessed combustible material shall not cover an area greater than 50,000

square feet at the facility, with no single pile exceeding 8,000 square feet. A pile of processed combustible material shall not cover an area greater than 25,000 square feet.

(5) Number of piles. The number of piles of combustible materials at the facility shall not exceed the maximum number specified in the notice of intent to operate the facility submitted to the executive director.

(6) Fire lanes between piles. There shall be a minimum separation of 40 feet from piles of unprocessed combustible materials and 20 feet between piles of processed combustible materials. An all-weather road shall encircle the area used for processing and storage of combustible material. At a minimum, this all-weather roadway shall have minimum 25-foot turning radii; shall be capable of accommodating firefighting vehicles during wet weather; and shall meet applicable local requirements and specifications. The open space between buildings and piles shall be kept open at all times; and be maintained free of combustible material, rubbish, equipment, or other materials. Upon coordination with the local fire marshal, the distance may be increased, as necessary, to protect human health and safety.

(7) Buffer zone. The set back distance from all property boundaries to the edge of the areas receiving, processing, or storing material must be at least 50 feet.

(8) Recharge Zone or Transition Zone. Notwithstanding the applicability requirements of Chapter 213 of this title (relating to Required Edwards Aquifer Protection Plans, Notifications, and Exemptions), facilities located on a recharge or transition zone shall have a water pollution abatement plan consistent with the requirements of §213.5(b) of this title (relating to Required Edwards Aquifer Protection Plans, Notifications, and Exemptions).

(9) Notice of intent. By the effective date of this subsection for existing facilities or at least 90 days prior to commencing new operations, the owner or operator must file a notice of intent in accordance with §328.5(b) of this title (relating to Reporting and Recordkeeping Requirements) that also includes provisions to demonstrate compliance with this subsection. A revised notice of intent must be filed with the executive director before a facility exceeds the maximum amount of material to be stored as specified in the current notice of intent.

(10) Recordkeeping. The owner or operator of a facility subject to the requirements of this subsection must maintain all records necessary to demonstrate compliance with this subsection.

(11) Compliance. Failure to operate and maintain a facility as proposed in the current notice of intent for the facility is a violation of this chapter.

(12) Effective date. The requirements of this subsection do not become effective until one year after commission adoption of this subsection.