

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §330.601, relating to Purpose and Applicability; the repeal of §§330.801-330.818, 330.820-330.836, 330.838, and 330.840-330.889; and new §§330.801-330.821 in Subchapter R, concerning Management of Used or Scrap Tires.

EXPLANATION OF PROPOSED RULES

The purposes of the proposed amendments, repeals and new sections are to address the sunset provisions of Health and Safety Code Chapter 361, Subchapter P, address the requirements of existing statutory language which does not contain a sunset provision, and to streamline certain requirements of the existing rules. In most areas of the proposed new sections, rule language from the existing sections has simply been streamlined, clarified, and/or reformatted. In other areas, new requirements are proposed.

Due to the sunset provisions of Health and Safety Code Chapter 361, Subchapter P, all references to reimbursement, end-use requirements, and the Waste Tire Recycling Fund (WTRF) have been deleted in this proposal. The proposed new rules no longer contain the 90-day limit for generators to remove whole tires from storage. Other proposed changes concerning generator requirements include removal of the requirement to accept used tires, removal of the restriction from accepting money for tires, removal of the requirement to remove tires from rims, removal of the differentiation between large and regular volume generators, and removal of the restriction that generators can only store their own tires. For transporters, the registration fee is proposed to be removed, the exemption from registration is

proposed to be expanded to include generators hauling their own tires and to include municipal solid waste vehicles, and the prohibition from charging a fee to haul tires is proposed to be deleted. For storage facilities, an exemption from registration as a storage site is proposed for generators who process and/or store 500 or fewer used or scrap tires on the ground or 2,000 or fewer in enclosed containers; the registration and design requirements for a scrap tire storage site have been reorganized but are essentially unchanged from the current rules; requirements are proposed to be added for land reclamation projects using tires (LRPUT); and the training requirements for employees transporting or handling tires and for transporters who deliver tires to the storage facility have been removed in the proposal. Concerning scrap tire facilities, the proposal includes processing, recycling, and energy recovery facilities under this designation, requires a scrap tire storage site registration for certain processors and for facilities storing more than a 30-day supply of tires, reduces the frequency of reporting to an annual report, and removes the \$500 registration fee. Concerning the Special Authorization Priority Enforcement List (SAPEL) and the Priority Enforcement List (PEL) program, the proposal has removed the 2,500,000 tire “trigger” for issuing contracts to procure cleanups for the removal of tires from PEL sites, and has removed the rule language concerning assignment of PEL sites on an individual basis to waste tire facilities, in favor of the contract process done on a competitive basis. Concerning closure costs estimates and financial assurance, the per-tire formula is proposed to be deleted, the written estimate of closure costs is proposed to be calculated based on actual estimates for third-party closure, and financial assurance sections are being proposed under Chapter 37 of this title (relating to Financial Assurance).

Also due to the sunset provisions of Health and Safety Code Chapter 361, Subchapter P, the following sections are proposed for repeal and will not be streamlined, clarified, or reformatted in the proposed new sections: §330.804, concerning the use of tire shreds in landfills; §§330.820-330.829, concerning WTRF allocation method, model, notification, fiscal audits, overpayment from the WTRF, and WTRF program reviews; §330.838, concerning requirements for a Type VIII-W.T. waste tire storage facility; §330.842, concerning waste tire facility classification and operational requirements such as shredding; §330.848, concerning eligibility for the WTRF program; §330.850, concerning requirements for waste tire recycling facilities; §330.853 and §330.854, concerning requirements and funding for waste tire energy recovery facilities; §330.856 and §330.857, concerning requirements for waste tire transfer stations and collection centers; §330.864, concerning ranking of illegal waste tire sites; §330.871 and §330.872, concerning the WTRF; and §§330.874-330.884, concerning WTRF grants, confidentiality, WTRF reimbursement and transfer of funds, special authorization tires, community service, executive director's regional site directive and protests thereof, formal petitions and hearings, and end use credit system.

Section 330.601(a)(1) is amended to update the reference to new §330.807. Thus, the phrase “§330.817 of this title (relating to Transporter Fees)” is replaced by the phrase “§330.807 of this title (relating to Transporter Requirements).”

Proposed new §330.801 sets forth purpose, which is to establish procedures and requirements for the safe storage, transportation, processing, utilization, and disposal of used or scrap tires or tire pieces.

Proposed new §330.802 contains applicability statements. Section 330.802(a) states that the proposed rules are applicable to persons that are involved in the generation, transportation, processing, storage, utilization, and disposal of used or scrap tires or tire pieces that are classified as municipal solid waste, recyclable materials, or inert fill materials and are regulated by the commission under §330.3.

Proposed §330.802(b) states that all used or scrap tires or tire pieces, except those collected incidentally by municipal solid waste collection vehicles, are subject to manifesting by registered generators.

Section 330.802(c) contains an exemption for scrap tires that are off-the-road tires from the requirement to be split, quartered or shredded at a storage site or a permitted landfill.

Proposed new §330.803 contains definitions for the following terms: “30-Day Supply;” “Alter;” “Authorized representative;” “Authorized scrap tire facility;” “Closure;” “Fleet operator;” “Generator;” “Good used tire;” “Land reclamation projects using tires;” “Manufacturer reject tire;” “Off-the-road tire;” “Operator;” “Owner;” “Processing;” “Professional engineer;” “Scrap tire;” “Scrap tire facility;” “Scrap tire storage site;” “Scrap tire transporter;” “Supersize pile;” “Tire monofill;” “Tire piece;” “Tire processor;” “Tire shredder;” and “Transportation facility.”

Proposed new §330.804 contains general requirements relating to penalties, and requirements concerning commingling, registration, permitted municipal solid waste facilities, and collection and transportation. Under §330.804(a), the penalties for violation of applicable sections of this subchapter are proposed to be any actions authorized by law to secure compliance, including administrative or civil penalties, and the suspension or revocation of registration or permit. Under proposed §330.804(b),

scrap tires are not allowed to be commingled with other types of scrap material or solid waste, except for incidental scrap tires picked up in enclosed municipal solid waste collection vehicles. Section 330.804(c) proposes that any permitted municipal solid waste landfill may store or process whole tires or tire pieces in an unused portion of the property within its permit boundary dedicated to tires only, with the requirement that such storage must be above-ground in controlled piles or lockable containers. Also, it is proposed that above ground storage of tires or tire pieces in quantities greater than 500 tires or the equivalent on the ground or 2,000 tires or the equivalent in enclosed or lockable containers at a permitted municipal solid waste landfill site shall not proceed until approval from the executive director or the commission is received. Approval is proposed to be by authorization for such storage in an approved Site Development Plan, or, as applicable, through a Class I permit modification and an amendment. Finally, §330.804(c) proposes to require that tire storage activity shall be conducted in a manner so as to not adversely affect operations at the site or to otherwise endanger human health or the environment. Proposed §330.804(d) contains standards for vehicles and equipment used for the collection or transportation of used or scrap tires or tire pieces, including basic requirements for construction, operation, maintenance, safety, and identification requirements. Under proposed §330.804(e), a person who, for eventual recycling, reuse, or energy recovery, temporarily stores scrap tires in a designated recycling collection area at a landfill permitted by the commission may be granted an exemption from shredding, splitting, or quartering the scrap tires by the executive director upon request.

Proposed new §330.805 contains registration requirements for scrap tire storage sites, scrap tire facilities, transportation facilities, and transporters, including application, record keeping, notice to the executive director of certain changes, reapplication, and procedures relating to the annulment, suspension, revocation, or denial of a registration. Under §330.805(1), an application for registration is proposed to be required on a form obtained from the executive director, with certain registration information listed. Section 330.805(2) requires the application to be signed by the authorized representative, and if applicable, the professional engineer who assisted in its preparation. Section 330.805(3) requires a copy of the registration notice to be kept at the site. Section 330.805(4) contains written notice to the executive director within 15 days if certain changes occur, such as changes in address, telephone number, applicant's registered name, or authorized representative. Section 330.805(5) contains the requirement to submit a new registration application if a change in operations or management methods occurs such that the existing registration no longer adequately describes current operations or methods. It is proposed that the executive director may issue a new registration, cancel the old registration, or transfer the old registration to the new registrant, and that timeliness of required submittals may be a factor in the executive director's determination. Section 330.805(6) spells out proposed registration annulment, suspension, revocation, and denial procedures. Also proposed are procedures for appeal, including an opportunity for a formal hearing which shall be a contested case proceeding.

Proposed new §330.806 contains requirements for generators of used or scrap tires or tire pieces. Under §330.806(a), each generator shall be responsible for ensuring that scrap tires or scrap tire pieces

are transported by a registered transporter to an authorized facility. Under §330.806(b), it is proposed that generators who store more than 500 (or weight equivalent) used or scrap tires or tire pieces on the ground or 2,000 (or weight equivalent) in enclosed and lockable containers are required to obtain a scrap tire storage registration. Section 330.806(b) also proposes restrictions on retailers and wholesalers of good used tires, requiring them to be sorted, marked, classified, and arranged in an organized manner, or else the used tires would be considered as stockpiled scrap tires subject to registration as a scrap tire storage site, and that tires stored outside in an uncontrolled pile shall be monitored for vectors, with appropriate control measures used at least once every two weeks. Section 330.806(c) contains an allowance for generators to transport its scrap tires to an authorized facility, or between its own business locations, without a transporter registration.

Proposed new §330.807 relates to transporter requirements, and contains registration, record keeping, reporting, and interstate transportation requirements. Section 330.807(a) proposes that this section applies to transporters collecting and hauling used or scrap tires or tire pieces. Proposed §330.807(b) spells out certain exemptions. These exemptions include transporter registration exemptions, subject to certain specified requirements, for used or defective tires shipped back to the manufacturer or its representative; for persons registered as On-Site Sewage Facility Installers transporting scrap tire pieces for construction of an on-site sewage disposal system; for certain types of hauling by retreaders; for trucks engaged in municipal solid waste collection or commercial routes which handle incidental loads of used or scrap tires or tire pieces; and for transportation vehicles owned and operated by municipalities, counties, or other governmental entities or agencies used to transport used or scrap tires

to an authorized facility. Section 330.807(c) pertains to proposed general requirements, and requires transporters to register prior to conducting business, to maintain records using the manifest system, and to be responsible for ensuring that scrap tires or tire pieces are transported to an authorized scrap tire facility. Section 330.807(d) proposes to require transporters to retain all manifests, work orders, and invoices showing the collection and disposition of all used or scrap tires and tire pieces, for a period of at least three years at the designated place of business and available to the executive director upon request. Section 330.807(d) also proposes detailed requirements concerning any changes made to the face of an original record. Section 330.807(e) contains annual report requirements for transporters. Proposed §330.807(f) pertains to interstate transportation, and requires compliance with applicable requirements of this subchapter by persons who transport or otherwise manage used or scrap tires, including persons who transport from Texas to other states or countries, or from other states or countries to Texas, or persons who collect or transport in Texas but have their place of business outside the state. There is a proposed conditional exemption for persons who transport tires from outside the state, and go through the state without leaving tires in the state (i.e., those which do not originate or end up in Texas).

Manifest system requirements are proposed in §330.808, including manifest requirements applicable to generators, transporters, and authorized facilities. It is proposed that generators be required to obtain the completed manifest within 60 days after the scrap tires or tire pieces were transported off-site by the transporter, and there are proposed requirements concerning uncompleted manifest and maintenance of records. Finally, proposed §330.808 states that if a transporter removes for beneficial use all tires from

an individually manifested load, the transporter shall return the original manifest to the generator within 60 days of the date of collection.

Proposed new §330.809 contains standards for storage of used or scrap tires or tire pieces. Section 330.809(a) states that the standards are applicable to persons that store or intend to store used or scrap tires or tire pieces, with exemption from this subchapter provided for the use of tires in the storage, protection, or production of agricultural commodities, and that storage of used or scrap tires or tire pieces requires registration in accordance with this proposed subchapter. Under §330.809(b), registration and deed recordation is proposed to be required for any property intended for storage of used or scrap tires or tire pieces. Other general requirements of this proposed subsection include: deed recordation; ensuring that the received tires have been manifested; abiding by all state and local codes and permitting, licensing, and registration requirements; maintaining a copy of the mechanism for financial assurance on-site, which is to be made available for inspection purposes; and submitting an annual summary of activities through the end of each calendar year on a form provided by the executive director, to be submitted no later than March 1 of the following year, giving the number of used or scrap tires or tire pieces received and their disposition, and giving the number of used or scrap tires or tire pieces removed from the facility.

Proposed new §330.810 contains requirements for scrap tire storage site registration. This section contains proposed requirements for obtaining a registration from the executive director, and spells out proposed registration application requirements for scrap tire storage sites, including general application

requirements, site and surrounding area information requirements, engineering information requirements, and evidence of financial assurance. Section 330.810(a) states that persons who store more than 500 used or scrap tires or tire pieces (or weight equivalent), or more than 2,000 used or scrap tires (or weight equivalent) shall be required to obtain a scrap tire storage registration from the executive director, pursuant to §330.805, with the proposed stipulation that storage activities shall not commence without an approved registration issued by the executive director. Section 330.810(b) sets out registration application requirements, including information concerning the number of copies, preparation, application drawings, maps, and applicant's statement. Site and surrounding area information requirements are proposed to include location maps, topographic maps, land ownership maps and lists, floodplain maps, legal description of the storage facility, property owner affidavit, and fire marshall approval of the fire protection system. Engineering information requirements are proposed to include site layout plan, drainage plan, fire plan, cost estimate for closure, and a detailed site operating plan. Finally, evidence of financial assurance is proposed to be required. Proposed §330.810(c) contains time frames for registration application processing, while §330.810(d) pertains to term limits, with an expiration 60 months from the date of issuance unless there is a change in ownership, and with renewal required prior to the expiration date.

Proposed new §330.811 contains the design requirements for scrap tire storage sites, which include safety standards, pile design specifications, processing standards, and requirements concerning aisle space, fire lane, buffer zone, fire protection, drainage, signs, flood protection, and compliance with all local building codes, fire codes, and other appropriate local codes. Section 330.811(a) sets out the

proposed safety standard that scrap tire storage sites shall be designed so that the health, welfare, and safety of operators, transporters, and others who use the sites are maintained. Section 330.811(b) includes limitations on the size of tire piles, except where a variance has been authorized by the executive director upon request, and after public comments are considered, and requirements relating to tire storage in trailers, enclosed buildings, and other types of covered enclosures. Section 330.811(c) includes the proposed requirements that outdoor tire piles be provided with fire lanes and all-weather roads including access to public roads, and other design and operating requirements. Under §330.811(d), a minimum buffer zone of 40 feet is proposed for any supersize piles and 40 feet with an opportunity for a variance for other outdoor tire piles. Section 330.811(e) includes the requirement, with a variance, for scrap tires to be split, quartered, or shredded within 90 days from the date of delivery to the site. Off-the-road tires, not including truck tires, are exempt from this requirement under this proposal. Appropriate vector controls are also required under proposed §330.811(e). Proposed §330.811(f) contains the access control requirement of a fence completely around the facility with a gate that is locked when the facility is closed, and for a scrap tire storage site the fence must be a chain-link type security fence at least six feet high. Proposed §330.811(g)-(h) contain fire-protection requirements, including options for fire hydrants, a storage pond, or a tank at the facility, and including large capacity dry chemical fire extinguishers. Proposed §330.811(i) requires, where necessary, diversion of rainfall runoff or other uncontaminated surface water within the site to a location off-site. Section 330.811(j) contains proposed entrance sign requirements. Proposed §330.811(k) requires sites in the 100-year floodplain to be protected, and requires demonstration that the tire storage will not restrict the flow of the 100-year flood, reduce temporary water storage capacity of the floodplain, or

result in washout of tires, tire pieces, or other material so as to pose a hazard to human health and the environment. Under proposed §330.811(l), the site shall be designed in accordance with all local building codes, fire codes, and other appropriate local codes.

Proposed new §330.812 contains record-keeping requirements applicable to scrap tire storage sites, which include general requirements and requirements relating to daily logs, manifests, and annual reporting. Additionally, it is proposed that where local ordinances require controls or records more stringent than the requirements of this subchapter, the owner or operator shall use such criteria to satisfy the commission's requirements.

Proposed new §330.813 contains scrap tire facility requirements applicable to owners and/or operators of certain facilities at which used or scrap tires or tire pieces are processed or used for energy recovery or recycling. The proposed section states that an applicant for a scrap tire recycling facility who intends to have more than a 30-day supply or who intends to store more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers and who is solely a scrap tire processing facility with no recycling or energy recovery on-site must obtain a scrap tire storage site registration. The proposed section also includes scrap tire facility registration requirements, including the requirement to register prior to commencing operations and requirements relating to the application for registration. General requirements are included concerning local ordinances, vector control, fire protection, operation of vehicles and equipment, and annual reporting.

Proposed new §330.814 contains requirements for scrap tire transportation facilities storing tires for longer than 30 days to register, and to comply with all applicable requirements contained in §330.805, concerning registration.

Proposed new §330.815 sets forth tire monofill permit requirements. Section 330.815(a) states that, in accordance with §330.4(a), no person may cause, suffer, allow, or permit the underground disposal or placement of tires or tire pieces into a tire monofill unless such activity is authorized by a permit from the commission; and that no person may commence physical construction of a tire monofill without first having submitted a permit application in accordance with certain Chapter 330 permit procedures and having received a permit from the commission. Section 330.810(b) contains the allowance that a separate permit is not required for the underground disposal or placement of tires or tire pieces into a tire monofill if such disposal or placement occurs within the permit boundary at a permitted municipal solid waste landfill site, with the proposed stipulation that such disposal or placement shall be conducted only as authorized by the approved site development plan, or by a permit modification or amendment, as appropriate.

Proposed new §330.816 contains requirements relating to LRPUT. Under proposed §330.816(a), notification to the executive director in writing and subsequent approval to proceed is required before the reclamation project may be initiated. It is proposed that the executive director may withhold such approval if the information submitted is not complete, that the executive director has 60 days to review the notification for completeness, and that additional information may be requested. Section 330.816(a)

also spells out the notification requirements, including certain maps, legal description, property owner's affidavits, capacity, time frames for the project, and professional engineer's certification. Section 330.816(b) contains the proposed requirement that undisturbed land shall not be excavated for the purpose of filling the same land with a mixture of tires and debris or soil, and that any borrow area, hole or other disturbed land area to be used for a LRPOT must have existed prior to the project, and it must have been excavated or soil removed for a purpose other than for the burial of tire pieces.

Proposed §330.816(c) states that the LRPOT shall not result in a public nuisance. Proposed §330.816(d) states that the owner and/or operator of the LRPOT shall notify the local fire marshal or fire department serving the area of the tire placement or fill activity. Proposed §330.816(e) contains the requirement that all tires used to fill land shall be split, quartered or shredded. Proposed §330.816(f) states that the owner and/or operator of the LRPOT shall comply with all applicable local ordinances. Proposed §330.816(g) limits the volume percent of tire pieces below ground to 50% maximum, with the rest of the placement being natural, inert material acceptable for filling land, such as rubble, soil, or rocks. If greater than 50% tire pieces by volume are placed below the ground, it is proposed that the site is considered to be a tire monofill subject to §330.815. Proposed §330.816(h) requires at least an 18-inch soil cover. Proposed §330.816(i) states that the owner and/or operator shall register as a scrap tire facility if a shredding operation is conducted on site for the processing of tires. Proposed §330.816(j) states that a scrap tire storage site registration is required if storing more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers would qualify as a tire storage site subject to registration under §330.811, and a

scrap tire storage site registration is required if the duration of the LRPOT extends beyond 90 days from the date of delivery of tires or tire pieces to the site. Finally, proposed §330.816(k) requires the executive director to issue an identifying number at the time the approval letter for the LRPOT is issued, and requires that this number be used in correspondence relating to the LRPOT.

Proposed new §330.817 contains requirements relating to the SAPEL, which consists of scrap tires generated in specially designated counties or regions which are identified by the executive director as areas which are not receiving adequate tire collection service and which pose a threat to public health and safety or the environment. Under §330.817(a)(1), the executive director may designate SAPEL collection entities and impose certain conditions on them, as necessary to minimize disruption of activities at generator locations. Section 330.817(a)(1) also states that implementation of this section is not intended to impair or reduce existing generator collection where this collection service is currently adequately provided. Section 330.817(a)(2) states that, unless otherwise provided by the executive director, the requirements in §330.817, relating to the PEL Program, do not apply to the SAPEL or SAPEL process. Section 330.817(a)(3) covers generator responsibilities relating to the SAPEL, stating that a generator wishing to have tires located at his site listed on the SAPEL shall cooperate fully with executive director instructions and shall make his site available for access by designated collection entities. Finally, §330.817(a)(3) states that failure to comply may result in tires at that site being ineligible for listing on the SAPEL. Proposed §330.817(b) contains requirements relating to SAPEL contracts. Under §330.817(b)(1), the executive director may contract with designated collection entities

as necessary to ensure adequate collection of SAPEL tires. Section 330.817(b)(2) contains requirements that may apply to a designated collection entity, as part of the SAPEL contract.

Proposed new §330.818 contains provisions concerning the PEL program. Section 330.818(a)(1) states that this section establishes standards applicable to the creation and maintenance of the PEL, the identification of illegal scrap tire sites, and the determination of a Potentially Responsible Party (PRP). Section 330.818(a)(2) would allow the executive director to issue contracts to procure clean-ups for the removal of tires from PEL sites through a competitive bid process, and states that if no reasonable bids are submitted, or at the executive director's discretion, the executive director may rebid the PEL sites. Section 330.818(b)(1) states that the PEL is a list maintained by the executive director of illegal scrap tire sites with over 500 scrap tires or tire pieces identified prior to December 31, 1997 and classified by the executive director; that the list shall be used by the executive director for the awarding of sites to successful contract bidders; and that scrap tires or tire pieces obtained from the PEL sites are eligible for payment according to contract guidelines. Section 330.818(b)(2) states that the executive director may, on an as-needed basis and with notice, recontract or execute additional contracts for any PEL site identified and contracted in the state. Section 330.818(b)(3) and (4) contain conditions relating to site access by commission members, employees, or agents, or authorized contractors or subcontractors. Section 330.818(b)(5) states that authorized contractors and their subcontractors are not considered agents of the state, and that they are solely responsible for their own actions and the actions of their agents. Under proposed §330.818(b)(6), property owners are not eligible for future tire cleanup assistance once their PEL site has been cleaned up. Section 330.818(c) states that authorized scrap tire

facilities that intend to receive payment for the utilization of scrap tires or tire pieces must enter into a PEL scrap tire site clean-up contract as a guarantee of job performance, and that should the facility's registration be suspended or revoked, then the PEL sites remaining in the PEL Scrap Tire Site Clean-up Contract shall be rebid. Section 330.818(d) spells out the authority of commission personnel with regard to cleaning up PEL sites, including requirements for the contractor to report on the status of the clean-up activities to the executive director; that the executive director shall have the authority to suspend clean-up activities at a PEL site in order to ensure protection of public health and safety, or the environment; that the executive director may undertake immediate remediation of a site under certain situations; that the executive director may implement a remedial program for a site if a person ordered to eliminate an imminent and substantial endangerment has failed to do so within the specified time limits; that the commission or the executive director may bring suit against a potentially responsible party to recover reasonable expenses, with criteria listed for determining whether a person is a potentially responsible party; that the commission or executive director shall seek to file the suit no later than one year after the date removal or remedial measures are completed; and that the commission or the executive director, in lieu of bringing suit to recover costs, may seek to file a lien against the property on which the site is located.

Proposed new §330.819 relates to public notice of intent to operate. Section 330.819(a) contains requirements for registered scrap tire storage facilities to publish notice in a local area newspaper, and provides for a variance to the public notice requirement, which may be requested if similar notice has been published within the previous 12-month period and the notice was associated with activities under

the jurisdiction of this subchapter. Section 330.819(b) contains the requirement for registered scrap tire facilities that have submitted an application amendment for a variance from the 8000 square feet pile size to publish notice of intent to increase the pile size. Section 330.819(c)-(e) spell out minimum requirements for notices of intent published by scrap tire storage site owners.

Proposed new §330.820 relates to motion for reconsideration by a person affected by an issued registration, and states that such a person may file such a motion pursuant to §50.39. The requirements of this new section are proposed to be added as new tire rule requirements, as opposed to requirements that have been streamlined, clarified, and/or reformatted from the existing tire rules.

Proposed new §330.821 contains requirements relating to closure cost estimates for financial assurance. Section 330.821(a) contains requirements for owners or operators of scrap tire storage sites to prepare, as part of the facility's registration application, a written cost estimate for the cost of hiring a third party to close the facility, which is to be determined by the sum of the estimated cost for a third party to undertake the closure and cleanup, with a minimum level of \$3000 proposed. Section 330.821(b) states that the closure cost estimate must equal the cost of closing the facility based on the maximum number of whole tires stored at the facility, the maximum volume of tire pieces, and disabling any equipment on site; that the executive director shall evaluate and determine the amount of closure costs for which evidence of financial assurance is required, and may amend the closure cost estimate provided by the owner or operator; and that the owner or operator remains responsible for the entire costs to close the site in cases where the closure cost estimate was not sufficient. Section 330.821(c) contains the

requirement that any amendment application include a recalculation of the closure cost estimate based on any requested volume increases; that facilities shall not increase the stored volume until the registration amendment has been approved by the executive director; and that only upon approval of the executive director will the amended registration closure cost estimate be the basis for determining financial assurance requirements. Section 330.821(d) contains conversion factors concerning the calculation of closure costs estimates for financial assurance. Section 330.821(e) states that the capacity of a site, as calculated for closure costs, may not be exceeded without an approved amended registration, along with posting at the facility of the revised financial assurance. Section 330.821(f) states that a copy of the latest approved closure cost estimate and a copy of the financial assurance mechanism must be kept at the facility during its operating life. Section 330.821(g) states that financial assurance required under this section shall be provided in accordance with §37.3001 and §37.3011. Section 330.821(h) states when closure will begin. Section 330.821(i) states that following a determination that the owner or operator has failed to perform closure in accordance with the registration requirements when required to do so, or when closure begins under subsection (h) of this section, the executive director may terminate or revoke the registration and draw on the financial assurance funds.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period these sections as proposed are in effect, there will be fiscal implications as a result of enforcement and administration of the sections. The significant fiscal implications of requirements for

the management of used or scrap tires are related to the repeal of the statutory authority for the tire program effective December 31, 1997. Revenue to the waste tire fund, approximately \$29 million annually, will not be collected after December 31, 1997 and no statutory authority for payments from the fund for processing or end use of used or scrap tires will exist beyond that date. For the period January 1, 1998 through August 31, 1999, additional funding for management of used or scrap tires has been provided through an emergency appropriation for the 1998-1999 biennium, however, no funding for the used or scrap tire program is currently authorized beyond August 31, 1999. The costs to the state of management of the used or scrap tire program will decrease as a result of the repeal of the specific statutory authority, however, no significant costs to state government are anticipated as a specific result of adoption of the rules as proposed. The proposed rules will retain certain elements of the existing regulatory program under more general authority for regulation of used or scrap tires and management of solid waste. The costs to the state of these activities as they are proposed will not vary significantly from the costs currently being incurred under existing regulations and statutory authority.

The repeal of the specific statutory provisions for management of used or scrap tires may result in increased costs to units of local government. These costs will relate to increased requirements for management of solid waste, litter abatement and removal of illegally discarded tires. Costs to local governments are not anticipated to increase as a direct result of the proposed rules and may, in fact, be mitigated by the provision of emergency appropriations beyond the sunset date of the waste tire program and the adoption of these sections in order to retain basic elements of the waste tire program. Continuing regulation of used or scrap tires, including cleanup of illegal tire disposal sites, regulation of

used or scrap tire facilities, financial assurance provisions for storage sites and authorization for legal landfilling of used or scrap tires will reduce many of the potential costs to local governments of waste management and illegal dumping, at least for the period for which funding is available.

PUBLIC BENEFIT

Mr. Minick has also determined that for each year of the first five years these sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be improved regulation and management of solid waste and used or scrap tires, enhanced protection of human health and safety, and increased conservation of energy and natural resources. The economic costs related to these rules are those associated with the operation of facilities subject to the rules - generators and transporters of used or scrap tires and operators of storage, processing or disposal facilities. The costs imposed by these sections may be considered to be significant only when compared to the costs of compliance in the absence of specific regulations for management of used or scrap tires with the repeal of the statutory authority for the waste tire program. The actual costs of compliance with proposed rules are not anticipated to be materially different for most affected operators from the costs associated with compliance with the sections that are proposed to be repealed. Some compliance costs for generators and handlers of used or scrap tires could decrease. These reductions will result from changes in requirements and allowable time periods for storage of used or scrap tires, reduced requirements and associated costs for transporters, and changes to registration and application requirements, including reductions in certain processing fees. Other operating requirements, including those for demonstration of financial assurance, may result in increased costs for energy recovery and

recycling facilities storing more than a 30-day supply of used or scrap tires. However, financial assurance costs for certain facilities may actually be reduced as a result of the use of proposed cost estimate procedures, rather than formulas, and the authorization of landfilling of used tires, which will reduce the disposal costs required to be guaranteed. Although actual cost impacts to affected persons and facilities may be positive or negative, no substantial economic costs of these proposed rules, separate and distinct from the sunset of the waste tire program, are anticipated to occur. Many of the persons subject to these proposed rules are small businesses. The effects on small businesses will be directly related to the size and type of facility, the number of used or scrap tires (or equivalents) generated, stored, processed or disposed, and other site-specific conditions. Persons purchasing new or good used tires will not be required to pay a fee for the sale of tires after the sunset date for the waste tire authority. This future cost savings, equivalent to \$2.00 for a new passenger car tire, will not be affected by the adoption of these rules. These are no other economic costs anticipated for persons required to comply with the sections as proposed.

DRAFT REGULATORY IMPACT ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated §2007.043. The following is a summary of that assessment. The specific purpose of the rules is to adopt a set of regulations for the sound and proper management of used or scrap tires or tire pieces that are classified as municipal solid waste. The rules will substantially advance this specific purpose by adopting a set of standards controlling the storage, transportation, treatment, and disposal of used tires, scrap tires, and tire pieces. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because the proposed changes provide for a streamlined set of regulatory management standards and do not limit or restrict a person's rights in private real property.

Also, the following exceptions to the application of Chapter 2007 of the Texas Government Code listed in Texas Government Code Annotated §2007.003(b) apply to these rules: an action taken to prohibit or restrict a condition or use of private real property if the governmental entity proves that the condition or use constitutes a public or private nuisance as defined by background principles of nuisance and property law of this state; and an action taken out of a reasonable good faith belief that the action is necessary to prevent a grave and immediate threat to life or property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The executive director has reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, or will affect an action/authorization

identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and will, therefore, require that applicable goals and policies of the CMP be considered during the rulemaking process.

The commission has prepared a consistency determination for the proposed rules pursuant to 31 TAC §505.22 and has found the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the proposed rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the proposed rules include the administrative policies and the policies for specific activities related to construction and operation of solid waste treatment, storage, and disposal facilities.

Promulgation and enforcement of these rules is consistent with the applicable CMP goals and policies because the proposed rules will encourage safe and appropriate storage, transportation, treatment, and disposal of used tires, scrap tires, and tire pieces that are classified as municipal solid wastes, which will result in an overall environmental benefit across the state, including in coastal areas. In addition, the proposed rules do not violate any applicable provisions of the CMP's stated goals and policies. The commission seeks public comment on the consistency of the proposed rules.

PUBLIC HEARING

A public hearing on the proposal will be held on January 27, 1998 at 10:00 a.m. in Room 2210 of Building F of the commission's Park 35 Office Complex located at 12100 North IH-35, Park 35 Circle,

Austin. 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 with the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments on the proposal should reference Rule Log Number 97140-330-WS and may be submitted to Heather Evans, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 201, 12100, Park 35 Circle, North Interstate 35, Building F, Room 4101 or P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Written comments must be received by 5:00 p.m., February 2, 1998. For further information or questions concerning this proposal, please contact Debbie Bohl, Municipal Solid Waste Division, at (512) 239-0044.

The amendment is proposed under the Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Code and other laws of the State of Texas, and to establish and approve all general policy of the commission; under Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361, §361.112, relating to the Storage, Transportation, and Disposal of Used or Scrap Tires, and under the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361, §361.011 and §361.024 which provide the commission with the authority to regulate municipal solid waste and adopt rules consistent with the general intent and purposes of the Act.

The proposed amendment implements the Health and Safety Code, Chapter 361.

SUBCHAPTER P : FEES AND REPORTING

§330.601. Purpose and Applicability.

(a) Purpose.

(1) Fees. The commission is mandated by the Solid Waste Disposal Act, Health and Safety Code, Chapter 361, to collect a fee for solid waste disposed of within the state, and from transporters of solid waste who are required to register with the state. Fee requirements for persons who collect and/or transport municipal wastewater treatment plant sludges, water supply treatment plant sludges, grit trap waste, grease trap waste, and septage are contained in §330.448 of this title (relating to Transporter Fees). [Transportation fee schedules for persons who engage in the collection and/or transportation of used or scrap tires are contained in §330.817 of this title (relating to Transporter Fees)]. Persons desiring to transport or deliver waste in enclosed containers or enclosed vehicles to a Type IV municipal solid waste management facility are subject to special route permit application and maintenance fees set forth and described in §330.32 of this title (relating to Collection and Transportation Requirements). The fee amount may be raised or lowered in accordance with spending levels authorized by the legislature.

(2) - (3) (No change.)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority to adopt.

Issued in Austin, Texas, on December 18, 1997.

SUBCHAPTER R : MANAGEMENT OF WHOLE USED OR SCRAP TIRES

The repeals are proposed under the Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code and other laws of this state. These amendments and new sections are also proposed under the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361, §361.011 and §361.024, which provide the commission with the authority to regulate municipal solid waste and adopt rules consistent with the general intent and purposes of the Act.

The proposed repeals implement the Health and Safety Code, Chapter 361.

- §330.801. Purpose.**
- §330.802. Applicability.**
- §330.803. Definitions.**
- §330.804. The Use of Tire Shreds in Landfills.**
- §330.805. Generators of Scrap Tires.**
- §330.806. Generator Registration.**
- §330.807. Generator Record Keeping.**
- §330.808. On Site Storage.**
- §330.809. Transportation Requirements.**
- §330.810. Penalties for Generators.**
- §330.811. Transporters of Whole Used or Scrap Tires.**

- §330.812. **Transporter Registration.**
- §330.813. **Delivery Requirement.**
- §330.814. **Vehicle and Equipment Sanitation Standards.**
- §330.815. **Transporter Record Keeping.**
- §330.816. **Interstate Transportation.**
- §330.817. **Transporter Fees.**
- §330.818. **Penalties for Transporters.**
- §330.820. **Processor's WTRF Allocation Method.**
- §330.821. **Processor's WTRF Allocation Model Factors.**
- §330.822. **Calculation of Factors for Processor's WTRF Allocation Model.**
- §330.823. **Determination of the Weighing Factors for the Processor's Allocation Model.**
- §330.824. **Notification of Allocation.**
- §330.825. **Fiscal Audits.**
- §330.826. **WTRF Fiscal Audits.**
- §330.827. **Overpayment from the WTRF.**
- §330.828. **WTRF Program Reviews, Applicability and Responsibility.**
- §330.829. **WTRF Program Reviews.**
- §330.830. **Penalties for Records Violations.**
- §330.831. **Storage of Whole Used or Scrap Tires or Shredded Tire Pieces.**
- §330.832. **Waste Tire Storage Facility Classification.**
- §330.833. **Waste Tire Storage Facility Registration.**

- §330.834. Evidence of Financial Responsibility.
- §330.835. Requirements for a Type VIII-R Waste Tire Storage Facility.
- §330.836. Delivery Requirement.
- §330.838. Requirements for a Type VIII-W.T. Waste Tire Storage Facility.
- §330.840. Penalties for Owners or Operators of Waste Tire Storage Facilities.
- §330.841. Waste Tire Facility Processors of Scrap Tires.
- §330.842. Waste Tire Facility Classification and Operation.
- §330.843. Waste Tire Facility Registration.
- §330.844. Evidence of Financial Responsibility.
- §330.845. Waste Tire Facility Record Keeping.
- §330.846. Deliver Requirement.
- §330.847. Operational Requirements for Waste Tire Facilities.
- §330.848. Eligibility for the Waste Tire Recycling Fund (WTRF) Program.
- §330.849. Penalties for Waste Tire Facilities.
- §330.850. Applicability and Responsibility for End Use of Scrap Tires.
- §330.851. Applicability and Responsibility for Waste Tire Recycling Facilities.
- §330.852. Requirements for Registration for a Waste Tire Recycling Facility.
- §330.853. Applicability and Responsibility for Waste Tire Energy Recovery Facilities.
- §330.854. Funding for Waste Tire Energy Recovery Facilities.
- §330.855. Requirements for Registration for a Waste Tire Energy Recovery Facility.
- §330.856. Applicability and Responsibility for Waste Tire Transfer Stations or Collection Centers.

- §330.857. Requirements for Registration for a Waste Tire Transfer Station or Collection Center.**
- §330.858. Requirements for a Waste Tire Transportation Facility.**
- §330.859. Penalties for Owners and Operators of Waste Tire Recycling Facilities, Waste Tire Energy Recovery Facilities, Waste Tire Transfer Stations or Collection Centers, and Waste Tire Transportation Facilities.**
- §330.860. Special Authorization Priority Enforcement List.**
- §330.861. Priority Enforcement List (PEL) Program.**
- §330.862. Potentially Responsible Party (PRP).**
- §330.863. Priority Enforcement List (PEL).**
- §330.864. Ranking of Illegal Waste Tire Sites.**
- §330.865. Contracting of PEL Sites.**
- §330.866. Pre PEL Clean-Up Responsibilities.**
- §330.867. Site Clean-Up Agreement.**
- §330.868. Approval to Collect and Utilize Tires from PEL Sites.**
- §330.869. Post PEL Clean-Up Responsibilities.**
- §330.870. Authority of Commission Personnel.**
- §330.871. Waste Tire Recycling Fund (WTRF).**
- §330.872. WTRF Program Operation.**
- §330.873. Public Notice of Intent to Operate.**
- §330.874. WTRF Grants.**
- §330.875. Confidentiality.**
- §330.876. WTRF Reimbursement Policies and Procedures.**

- §330.877. Transfer of Appropriated Funds Within the WTRF.**
- §330.878. Special Authorization Tires.**
- §330.879. Community Service.**
- §330.880. Executive Director's Regional Site Directive or Central Office Report.**
- §330.881. Protest of Site Directive and/or Central Office Report.**
- §330.882. Formal Petition.**
- §330.883. Hearing by the Commission.**
- §330.884. End Use Credit System.**
- §330.885. Cost Estimate for Closure.**
- §330.886. Financial Assurance for Closure.**
- §330.887. Incapacity of Owners or Operators or Financial Institutions.**
- §330.888. Wording of the Instruments.**
- §330.889. Special Conditions for Beneficial Use of Scrap Tires.**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority to adopt.

Issued in Austin, Texas, on December 18, 1997.

SUBCHAPTER R : MANAGEMENT OF USED OR SCRAP TIRES

The new sections are proposed under the Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code and other laws of this state. These amendments and new sections are also proposed under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361, §361.112(b) which provides the commission with the authority to register a site to store more than 500 used or scrap tires, §361.112(e) which provides the commission with the authority to adopt forms and procedures for the registration and permitting, and §361.112(m) which provides the commission with the authority to adopt rules to regulate storage of scrap or shredded tires that are stored at a marine dock, rail yard, or trucking facility.

The proposed new sections implement the Health and Safety Code, Chapter 361.

§330.801. Purpose.

The purpose of the rules in this subchapter is to establish procedures and requirements for the safe storage, transportation, processing, utilization, and disposal of used or scrap tires or tire pieces.

§330.802. Applicability.

(a) This subchapter applies to persons that are involved in the generation, transportation, processing, storage, utilization, and disposal of used or scrap tires or tire pieces that are classified as municipal solid waste, recyclable materials, or inert fill materials and that are regulated by the commission under §330.3 of this title (relating to Applicability).

(b) All used or scrap tires or tire pieces, except for tires collected incidentally by municipal solid waste collection vehicles, are subject to manifesting by registered generators according to the requirements in §330.808 of this title (relating to Manifest System).

(c) Scrap tires that are off-the-road tires intended for use on heavy machinery, including, but not limited to, an earth mover/dozer, a grader, or mining equipment are exempt from the requirements to be split, quartered or shredded at a storage site or a permitted landfill.

§330.803. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Other definitions, pertinent to specific sections, are contained within the appropriate sections.

30-Day supply - An amount equal to the highest documented monthly consumption of tires consumed for energy recovery or legitimately recycled in the six-month period preceding the month for which the supply is being calculated. A facility in operation for less than six months shall submit an estimate of a 30-day supply for commission review, evaluation and approval.

Alter - To modify any record or document kept or received by any entity subject to the requirements of this subchapter.

Authorized representative - A facility owner or a person designated in writing by a facility owner to sign documents, make commitments for the entity, and represent the entity in all matters related to the application for registration or permit.

Authorized scrap tire facility - A facility authorized to accept scrap tires including, but not limited to, a registered scrap tire storage site, scrap tire facility or permitted landfill.

Closure - The cessation of acceptance of used or scrap tires or tire pieces for processing and/or storage which results in taking the facility out of service.

Fleet operator - An entity that owns or operates more than 15 vehicles and generates 30 or more used or scrap tires per calendar quarter.

Generator - An entity, except a scrap tire energy recovery facility and a scrap tire recycling facility, that accepts used or scrap tires or tire pieces for temporary storage, is a fleet operator, is an automotive dismantler, or is a whole new or used tire retailer, wholesaler, manufacturer, recapper or retreader.

Good used tire - A used tire, not including a recapped or retreaded tire, suitable for continued use for its original intended purpose.

Land reclamation - The filling, rehabilitating, improving and restoring of excavated and/or deteriorated and/or disturbed land in order to reclaim and prepare it for reuse for a long-term beneficial purpose.

Land reclamation projects using tires (LRPUT) - A project to fill, rehabilitate, improve and/or restore already excavated, deteriorated and/or disturbed land, which uses no more than 50% by volume of tire pieces along with natural inert fill materials such as rock, soil and debris, for the purpose of restoring the land to its approximate natural grade and to prepare and/or reclaim the land for re-use. Projects for the use of used or scrap tires or tire pieces as a component of an On-Site Sewage Facility as defined in §285.50 of this title (relating to General Requirements for Registration and Certification) are not included in this definition.

Manufacturer reject tire - A tire rendered defective in the manufacturing process, whether the tire is determined to be defective before or after consumer purchase.

Off-the-road tire - A tire intended for use on heavy machinery, including, but not limited to, an earth mover/dozer, a grader, agricultural machinery or mining equipment. Truck tires are not off-the-road tires.

Operator - The person responsible for the overall operation of the facility.

Owner - The person or company who owns the facility or part of a facility.

Processing - The extraction of materials from or the transfer, volume reduction, conversion to energy or separation and preparation of solid waste for reuse or disposal.

Professional engineer - A person licensed by The Texas Board of Professional Engineers to practice engineering in the State of Texas.

Scrap tire - A tire that can no longer be used for its original intended purpose. A used tire that can be salvaged and used for another purpose, retreaded or sold as a good used vehicle tire is not a scrap tire. A whole used tire that cannot be reused for or legally modified to be reused for its original intended purpose is a scrap tire.

Scrap tire facility - A facility which processes, conducts energy recovery or recycles used or scrap tires or tire pieces.

Scrap tire storage site - A registered facility where more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers. The term does not include a transportation facility.

Scrap tire transporter - A registered entity that collects and transports used or scrap tires or tire pieces for storage, processing, recycling or energy recovery.

Supersize pile - For the purpose of this subchapter, a supersize pile shall be any shredded tire pile in excess of 8,000 square feet up to a maximum of 24,000 square feet. All sites with piles designated as supersize shall be required to receive prior approval from the local fire marshal, publish public notice of intent in accordance with §330.819 of this title (relating to Public Notice of Intent to Operate), and maintain at least a 40-foot fire lane.

Tire monofill - A below-ground depository, landfill or landfill trench consisting of greater than 50% by volume of tires and/or tire pieces.

Tire piece - A particle of a scrap tire or scrap tire piece that has been split, quartered or shredded to a usable size such as two-inch minus, or other size required by an industry user or recycler.

Tire processor - A registered scrap tire facility where used or scrap tires or tire pieces are collected and shredded for delivery to a scrap tire storage site, or a facility that recycles, reuses or recovers the energy from the tire pieces. Mobile tire processing facilities shall be considered scrap tire facilities and required to comply with all applicable requirements contained in this subchapter relating to scrap tire facilities.

Tire shredder - A piece of equipment used to split, shred or quarter tires, whether stationary, or mounted on wheels or skid mounted.

Transportation facility - A facility such as a marine terminal, rail yard, or trucking facility where scrap tires or tire pieces may not be stored for periods longer than 30 consecutive calendar days.

§330.804. General Requirements.

(a) An entity that violates the applicable sections of this subchapter shall be subject to any action authorized by law to secure compliance, including the assessment of administrative penalties or civil penalties as prescribed by law, and the suspension or revocation of registration or permit.

(b) Used or scrap tires may not be commingled with any other type of scrap material or solid waste, except for incidental scrap tires picked up in enclosed municipal solid waste collection vehicles.

(c) Any permitted municipal solid waste landfill site may store or process whole tires or tire pieces in an unused portion of the property within its permit boundary dedicated to tires only. Storage shall be above ground in controlled storage piles or in enclosed and lockable containers, pursuant to §330.811 of this title (relating to Design Requirements for Scrap Tire Storage Site). A permitted municipal solid waste landfill site shall not store tires or tire pieces in excess of 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers without prior written approval from the executive director or the commission. Approval of storage or processing shall be by authorization for such storage in an approved Site Development Plan, or, as applicable, through a Class I permit modification under §305.70 of this title (relating to Municipal Solid Waste Class I Modifications) or an amendment under §305.62 of this title (relating to Amendment). The tire storage and/or processing activity shall not be conducted in a manner that will adversely affect operations of the municipal solid waste disposal site, or otherwise endanger human health or the environment.

(d) All vehicles and equipment used for the collection and transportation of used or scrap tires or tire pieces shall be constructed, operated, and maintained to prevent loss of used or scrap tires or tire pieces during transport and to prevent health nuisances and safety hazards to operating personnel and

the public. Collection vehicles and equipment shall be maintained in a sanitary condition to prevent odors and insect breeding. Any vehicle or trailer used to transport used or scrap tires or tire pieces shall be identified on both sides and the rear of the vehicle. The identification shall consist of the name and place of business of the transporter and the commission registration number, using numbers and letters at least two inches tall. Trailers or trucks used to transport used or scrap tires shall either be fully enclosed and lockable, or have sidewalls of sufficient height to contain the load. Trailers and trucks transporting used or scrap tires in excess of the sidewall height of the vehicle shall be covered with a tarp during transit. Trailers and trucks transporting any amount of tire pieces shall be covered with a tarp during transit.

(e) A person who, for eventual recycling, reuse, or energy recovery, temporarily stores used or scrap tires in a designated recycling collection area at a permitted landfill may be granted an exemption from shredding, splitting or quartering the scrap tires by the executive director, upon request.

§330.805. Registration Requirements.

Registration requirements for scrap tire storage sites, scrap tire facilities, transportation facilities, and transporters are as follows:

(1) An application for a registration shall be made on a form obtained from the executive director, upon request. The applicant may deliver the completed application to any commission regional office or mail it to the following address: Texas Natural Resource Conservation Commission, P.O. Box 13087, Mail Code 125, Austin, Texas 78711-3087. The following registration information must be provided to the executive director:

(A) the name, mailing address, county, and telephone and facsimile numbers of the applicant;

(B) the name, mailing address, and telephone number of the property owner where the scrap tire storage site, scrap tire facility, or transportation facility is located;

(C) the street location of the scrap tire storage site, scrap tire facility, or transportation facility, including county;

(D) the approximate number of used or scrap tires or tire pieces (in tons) that will be stored at the scrap tire storage site or the scrap tire facility;

(E) the existing land use surrounding the scrap tire storage site, scrap tire facility, or transportation facility; and

(F) the tax identification number.

(2) The application must be signed by the authorized representative and, if applicable, the professional engineer who assisted in its preparation.

(3) Entities that are registered by the executive director shall maintain a copy of their commission registration notice at their designated place of business.

(4) A registered entity shall provide written notice to the executive director, within 15 days, if:

(A) the mailing address or telephone number of the entity changes;

(B) the office or designated place of business is relocated;

(C) the applicant's registered name is changed; or

(D) the authorized representative has changed. If the authorized representative has changed, a registered entity shall provide a written, signed designation of the new authorized representative, including the representative's name, mailing address, and telephone and facsimile numbers.

(5) Within 10 days of a change in ownership, or if a change in operations or management methods occurs such that the existing registration no longer adequately describes current operations or management methods, the registered entity shall submit a new registration application to the executive director. Following a determination, the executive director may issue a new registration, cancel the old registration or transfer the old registration to the new registrant. Timeliness of required submittals may be a factor in the executive director's determination.

(6) Annulment, suspension, revocation or denial of registration procedures are as follows:

(A) The executive director may annul, suspend or revoke a registration or deny an initial or renewal registration for:

(i) failure to maintain complete and accurate records required under this chapter;

(ii) failure to maintain vehicles in safe working order as evidenced by at least two citations per vehicle from the Texas Department of Public Safety or local traffic law enforcement agencies;

(iii) failure to maintain equipment in safe working order;

(iv) altering any record maintained or received by the registrant;

(v) delivery of used or scrap tires or tire pieces to a facility not registered to handle the tires, unless the facility receiving the tires is exempt from registration under §330.804(c) of this title (relating to General Requirements);

(vi) failure to comply with any rule or order issued by the commission pursuant to the requirements of this chapter;

(vii) failure to submit any applicable annual report;

(viii) failure to pay registration fees;

(ix) failure to maintain financial assurance as required;

(x) dumping of used or scrap tires or tire pieces illegally;

(xi) collection, storage, transportation or processing of used or scrap tires or tire pieces without registration, as required in this section;

(xii) failure to notify the executive director of any change in registration information as required in paragraph (4) of this section.

(B) A registration shall be suspended for a period of one year; however, depending upon the seriousness of the offense(s), the time of suspension may be increased or decreased. A registration is revoked automatically upon a second suspension. If the registration is suspended or revoked, an entity shall not collect, store, transport or process used or scrap tires or tire pieces regulated under this subchapter.

(C) The holder of a registration that has been revoked by the executive director may reapply for registration pursuant to this subchapter as if applying for the first time, after a period of at least one year from the date of revocation. If a registration is revoked by the executive director a second time, the revocation shall be permanent.

(D) Appeal of annulment, suspension, revocation or denial of initial or renewal registration procedures are as follows:

(i) An opportunity for a formal hearing on the annulment, suspension or revocation of registration may be requested in writing by the registrant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of proposed revocation or denial of registration has been sent from the executive director to the last known address of the registrant, as shown in the records of the agency.

(ii) An opportunity for a formal hearing on the denial of registration or renewal of registration may be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of denial has been sent from the executive director to the last known address. If the registration is denied, a person shall not collect, store, transport or process used or scrap tires or tire pieces.

(iii) The formal hearing under this paragraph shall be a contested case in accordance with the requirements of the Administrative Procedures Act, Texas Government Code Annotated, §2001 et seq. and the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated Chapter 361 and the rules of the commission.

§330.806. Generator Requirements.

(a) Each generator shall be responsible for ensuring that scrap tires or scrap tire pieces are transported by a registered transporter to an authorized facility.

(b) The following requirements apply to on-site storage by generators:

(1) Generators may store used or scrap tires or tire pieces at the location where they are generated, provided the number of used or scrap tires does not exceed 500 used or scrap tires (or

weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers;

(2) Generators who store used or scrap tires in excess of 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers shall be required to obtain a scrap tire storage registration pursuant to §330.805 of this title (relating to Registration Requirements);

(3) Retailers and wholesalers who sell good used tires as a commodity shall do so only from stock that has been sorted, marked, classified, and arranged in an organized manner for sale to the consumer, or has been designated on the manifest as removed for reuse by a registered transporter. Used tires that are to be resold as commodities, but are not sorted, marked, classified, and arranged in an organized manner for sale to the consumer, shall be considered as stockpiled scrap tires and the site shall be subject to registration as a scrap tire storage site; and

(4) Tires stored outside shall be monitored for vectors, and appropriate vector control measures shall be utilized at least once every two weeks.

(c) A generator of used or scrap tires may transport its scrap tires between its own business locations or to an authorized facility without a transporter registration, but must still comply with all

manifesting requirements in §330.808 of this title (relating to Manifest System) and record keeping requirements in §330.807(d) of this title (relating to Transporter Requirements).

§330.807. Transporter Requirements.

(a) Applicability. The regulations contained in these sections establish standards applicable to transporters collecting and hauling used or scrap tires or tire pieces.

(b) Exemptions.

(1) Used or defective tires shipped back to the manufacturer or manufacturer's representative for adjustment are not required to be transported by a registered transporter, provided the generator retains, for a period of three years, written records of the shipments, indicating the date of shipment, destination and the number of tires in each shipment. These records shall be made available to the executive director upon request.

(2) Any person who is registered with the executive director as an On-Site Sewage Facility Installer under §285.50 of this title (relating to General Requirements for Registration and Certification) may transport used or scrap tires or tire pieces for construction of an on-site sewage disposal system without a transporter registration, but must still comply with all manifesting

requirements under §330.808 of this title (relating to Manifest System) and record keeping requirements in subsection (d) of this section.

(3) Retreaders who haul tires from customers for the purpose of retreading or who return tires to customers after retreading or recapping, do not have to register as transporters; however, they must register as transporters if they haul tires to an authorized facility.

(4) Trucks engaged in municipal solid waste collection or commercial route collection which handle incidental loads of used or scrap tires or tire pieces as part of their normal household or commercial collection activities, may transport such incidental small quantities of scrap tires to a landfill, transfer station or other collection point for proper handling without a transporter registration.

(5) Transport vehicles owned and operated by municipalities, counties, or other governmental entities or agencies which are used to transport used or scrap tires to an authorized facility shall be exempt from registration under this section; however, each load of used or scrap tires shall be manifested in accordance with §330.808 of this title.

(c) General Requirements.

(1) Transporters shall register their operations with the executive director before conducting business, according to the registration procedures outlined in §330.805 of this title (relating to Registration Requirements).

(2) Transporters shall maintain records using a manifest system, as required in §330.808 of this title.

(3) Each transporter shall be responsible for ensuring that used or scrap tires or tire pieces are transported to an authorized scrap tire facility.

(d) Maintenance of records. The transporter shall retain all manifests, work orders and invoices showing the collection and disposition of all used or scrap tires and tire pieces. Records shall be retained by the transporter at the designated place of business for a period of at least three years and made available to the executive director upon request.

(1) Any change made to the face of an original record shall be made by drawing a single line through the item being changed, ensuring that such item remains legible and readable. To the side of such mark, the person making the change shall place his/her initials with the date of the change.

(2) Any change made to the face of an original record shall be accompanied by a written justification stating the reason and purpose for the change. This written justification shall be prepared simultaneously with the change to the original record, attached to the original record, maintained at the designated place of business for a period of at least three years, and made available to the executive director upon request. The justification shall include the date of the change, and the full name and position of the individual making the change.

(e) Annual report. Transporters shall submit to the executive director an annual report of their activities from January 1 through December 31 of each calendar year showing the number and type of used or scrap tires collected listed by generator name and address, the disposition of such tires, and the number of whole used or scrap tires delivered to each facility. The report shall be submitted no later than March 1 of the year following the end of the reporting period. The report shall be prepared on a form provided by the executive director.

(f) Interstate transportation. Persons who engage in the transportation of used or scrap tires or tire pieces from Texas to other states or countries, or from other states or countries to Texas, or persons who collect or transport used or scrap tires or tire pieces in Texas but have their place of business in another state or country, shall comply with all of the requirements for transporters contained in this subchapter. If such persons also engage in any activity of managing used or scrap tires or tire pieces in Texas by storage, processing or disposal, they shall follow the applicable requirements for operators of such activities. Persons who engage in the transportation of used or scrap tires or tire

pieces which do not originate or terminate in Texas, are exempt from these regulations, except for §330.804(d) of this title (relating to General Requirements).

§330.808. Manifest System.

(a) Generators shall obtain from the transporter collecting tires from their place of business and maintain, a record of each individual load of used or scrap tires or tire pieces hauled off from their business location. The record shall be in the form of a five-part manifest or other similar documentation approved by the executive director. The generator shall complete the information pertaining to generator name, address, and telephone number, and number of tires removed on the manifest. The generator shall indicate the destination of all used or scrap tires or tire pieces removed from the business location. A representative of the generator shall sign the manifest acknowledging that the information on the manifest is true and correct.

(b) The transporter shall complete the information on the manifest pertaining to transporter identification and number of tires removed for beneficial reuse. Transporters shall maintain a manifest record of each individual collection and delivery. The transporter shall sign the manifest, acknowledging that the information on the manifest form is true and correct. If the transporter removes, for beneficial reuse, all tires from an individually manifested load, the transporter shall return the original manifest to the generator within 60 days of the date of collection.

(c) The authorized facility accepting delivery of the used or scrap tires or tire pieces shall complete the information on the manifest pertaining to the authorized facility identification and number or weight of tires or tire pieces accepted for delivery. A representative of the authorized facility shall sign the manifest, acknowledging that the information on the manifest form is true and correct. The authorized facility shall ensure that the top original of the five-part manifest is completely filled out and returned to the generator within 60 days of the date and time of collection as indicated in Section 1 of the manifest.

(d) A generator shall obtain the completed manifest within 60 days after the scrap tires or tire pieces were transported off-site by the transporter.

(e) The generator shall notify the appropriate commission regional office of any transporter or authorized scrap tire facility that fails to complete the manifest, alters the generator portion of the manifest, or fails to return the manifest within three months after the off-site transportation of the used or scrap tires or tire pieces.

(f) Originals of manifests, work orders, invoices or other documentation used to support activities related to the accumulation, handling, and shipment of used or scrap tires or scrap tire pieces shall be retained by the generator for a period of three years. All such records shall be made available to the executive director upon request.

(1) Any change made to the face of an original record shall be made by drawing a single line through the item being changed, ensuring that such item remains legible and readable. To the side of such mark, the person making the change shall place his or her initials with the date of such change.

(2) Any change made to the face of an original record shall be accompanied by a written justification stating the reason and purpose for the change. This written justification shall be prepared simultaneously with the change to the original record, attached to the original record, maintained at the designated place of business for a period of at least three years, and made available to the executive director upon request. The justification shall include the date of the change, and the full name and position of the individual making the change.

(3) Should the executive director identify discrepancies/errors in records, an opportunity will be given to justify, in writing, any such errors or discrepancies.

§330.809. Storage of Used or Scrap Tires or Tire Pieces.

(a) Applicability. This section establishes standards applicable to persons that store or intend to store more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers on any public or privately owned property. Persons that store used

or scrap tires or tire pieces shall register in accordance with this subchapter. This subchapter does not apply to the use of tires in the storage, protection, or production of agricultural commodities.

(b) General requirements.

(1) All owners and/or operators shall properly register their property with the executive director if the intended use of the property is for the storage of used or scrap tires or tire pieces, pursuant to §330.805 of this title (relating to Registration Requirements).

(2) At such time as a properly registered storage site begins operations, the owner and/or operator shall file in the county deed records an affidavit to the public advising that the land has been used for a tire storage facility.

(3) Owners and/or operators shall ensure that the tire transporters or mobile tire processors that deliver scrap tires or tire pieces to their registered scrap tire storage site have manifested the used or scrap tires or tire pieces, pursuant to §330.808 of this title (relating to Manifest System).

(4) Owners and/or operators of waste tire storage facilities shall obtain all required necessary and appropriate state and local permits, licenses, or registrations and operate in compliance with such permits, licenses, or registrations, or other applicable state and local codes.

(5) Owners and/or operators shall maintain a copy of the mechanism for financial assurance on-site as specified in Chapter 37, Subchapter M of this title (relating to Financial Assurance Requirements for Scrap Tire Storage Facilities) which shall be made available for inspection by the executive director or authorized agents or employees of local governments having jurisdiction to inspect the storage facility.

(6) Owners and/or operators shall submit to the executive director an annual summary of their activities from January 1 through December 31 of each calendar year, showing the number and disposition of used or scrap tires or tire pieces received, and the number of used or scrap tires or tire pieces removed from the facility. The annual report shall be submitted no later than March 1 of the year following the end of the reporting period. The annual report shall be prepared on a form provided by the executive director.

§330.810. Scrap Tire Storage Site Registration.

(a) Registration required. Persons who store more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers shall be required to obtain a scrap tire storage site registration from the executive director pursuant to §330.805 of this

title (relating to Registration Requirements). Storage activities shall not begin until the executive director approves the registration.

(b) Application requirements.

(1) The application for a scrap tire storage site registration or amended registration shall consist of: the application form; site and surrounding area information; engineering information, including a site layout plan; and a site operating plan; and evidence of financial assurance as required under this section.

(2) Applications shall be submitted in triplicate.

(3) Preparation of the application shall be in accordance with the requirements of the Texas Engineering Practice Act, Article 3271a, Vernon's Annotated Texas Statutes. Each sheet of engineering plans, drawings, maps, calculations, computer models, cost estimates, and the title or contents page of the application shall be signed and sealed by a professional engineer in accordance with the Rules of the Texas Board of Professional Engineers.

(4) Drawings shall be legible and include a dated title block, scale, and responsible engineer's seal, if required. If color coding is used, it should be legible and the code distinct when

reproduced on black and white photocopy machines. Drawings shall be submitted using a standard engineering scale.

(5) Each map or plan drawing shall have a north arrow, a legend and a reference to the base map source and date if the map is based upon another map. The latest revision of all maps shall be used. Maps shall show the following:

(A) all structures and inhabitable buildings within 500 feet of proposed site;

(B) location of all roads within one mile of the site that will normally be used to access the site;

(C) latitudes and longitudes;

(D) area streams;

(E) the property boundary of the site; and

(F) drainage, pipeline, and utility easements within or adjacent to the site.

(6) The applicant or an authorized representative shall provide a signed statement representing that he or she: is familiar with the application and all supporting data; is aware of all

commitments represented in the application; is familiar with all pertinent requirements in these regulations; and agrees to develop and operate the scrap tire storage site in accordance with the application, the regulations, and any special provisions that may be imposed by the executive director.

(7) Site and surrounding area information includes the following.

(A) Maps.

(i) Location maps. These maps shall be all or a portion of county maps prepared by Texas Department of Transportation. At least one general location map shall be at a scale of one-half inch equals one mile. These maps may be obtained at a nominal cost from the nearest District Highway Engineer Office or by writing to: Texas Department of Transportation, Attention: Transportation Planning Division (D-10), P. O. Box 5051, West Austin Station, Austin, Texas 78763-5051;

(ii) Topographic maps. These maps shall be United States Geological Survey 7 1/2-minute quadrangle sheets or equivalent, marked to show the storage site boundaries and roadway access. These maps may be obtained at a nominal cost from: Branch of Distribution, United States Geological Survey, Federal Center, Denver, Colorado 80225;

(iii) Land ownership map and list. This map shall locate the property owned by potentially affected landowners. The map shall show all property ownership within 500 feet of the site. A list shall be provided that gives each property owner's and easement holder's name and mailing address. The list shall be keyed to the Land Ownership Map.

(iv) Floodplain maps. These maps shall be the appropriate Federal Emergency Management Agency maps or other demonstration acceptable to the executive director indicating the location of any 100-year flood plain which may exist within the property boundary or surrounding area.

(B) Legal description. A legal description of the storage facility and the volume and page number of the deed record, or if platted property, the book and page number of the plat record of only that acreage encompassed in the application.

(C) Property owner affidavit. A statement from the property owner shall be submitted on a form provided by the executive director; and shall be witnessed and notarized. The form shall include:

(i) the legal description of the site;

(ii) 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 site;

(iii) acknowledgment that the owner has a responsibility to file in the county deed records an affidavit to the public advising that the land has been used for a tire storage facility, at the time as the site actually begins operating; and

(iv) acknowledgment that the site owner or operator and the State of Texas shall have access to the property during the active life and for a period of not less than five years after closure for the purpose of inspection and maintenance.

(D) Fire marshal approval. The fire marshal with jurisdiction over the facility location shall approve the fire protection system. A letter from the fire marshal shall be included in the application stating that the fire marshal has reviewed and approved the fire protection aspects of the application as well as the design of the all-weather roads to accommodate fire fighting vehicles. The fire marshal shall sign and date the Site Layout Plan.

(8) Engineering information includes the following.

(A) Site layout plan. The site layout plan shall include:

(i) location of storage areas;

(ii) location of fire lanes and fire control facilities;

(iii) security fencing, gates and gatehouse, site entrance and access roads and fire lanes in accordance with §330.811(c) and (d) of this title (relating to Design Requirements for Scrap Tire Storage Site);

(iv) location of buildings; and

(v) location and description of processing equipment.

(B) Drainage plan. A drainage plan showing drainage flow throughout the scrap tire storage site area, locations of streams and any other important drainage feature of the facility. Calculations shall be presented to show that normal drainage patterns will not be significantly altered. If the executive director determines that significant alteration will occur, the owner/operator shall design and provide additional surface drainage controls shall be designed and provided to mitigate the effects of the altered watershed, as required by the executive director.

(C) Fire plan. The fire plan and all revisions shall be maintained at the site, with copies provided to all local fire departments and other emergency response teams, and shall include guidance or instruction on the following:

(i) roles to be assumed by on-site personnel (example: fire-fighting coordinator, equipment custodian, hose operator, etc.) in the event of a fire, duty stations, and procedures to be followed by these persons;

(ii) arrangements agreed to by local fire departments, police departments, hospitals, contractors, nearby businesses and industries that can be called for assistance, and state and local emergency response teams. In this regard, a letter from each of these entities shall be included in the fire plan, which letters shall acknowledge receipt of a copy of the fire plan, and agreement to participate as stated in the fire plan.

(iii) names, addresses, and telephone numbers of these emergency response teams (fire, police, medical, etc.) that are to be included in the plan. The fire plan must include a map of the general area of the site that shows the site location, the location of the emergency response teams included in the plan (fire stations, police stations, hospitals, etc.). The plan shall also include the best route for these emergency response teams to take from their location to the site location.

(iv) names, addresses, and telephone numbers of all site employees that are qualified to act as emergency coordinator(s) (this list must be kept up to date, and where more than one person is listed one must be designated as primary coordinator and the others as alternates);

(v) a list of all emergency equipment at the facility (fire extinguishers, protective clothing items, hoses, pumps, axes, shovels, detention ponds, water storage tanks, fire hydrants, signal and alarm system equipment, decontamination equipment, etc.), a copy of the Site Layout Plan (to be posted at several prominent locations on the site as well as included in the fire plan) drawing that clearly marks the location of these items as well as personnel assembly points and evacuation routes from the site and from buildings on the site, and a narrative description of where these items are kept or located on site as well as a description of how the items are used (if applicable) and their capabilities;

(vi) an evacuation procedure for facility personnel where there is a possibility that evacuation could be necessary, evacuation routes, alternate routes, and signals to be used by the emergency coordinator(s) for the various necessary procedures; and

(vii) information about any insurance held by the company that would cover fire damage, loss, and cleanup.

(D) Cost estimate for closure. The applicant shall submit a cost estimate for closure costs in accordance with §330.821 of this title (relating to Closure Cost Estimate for Financial Assurance).

(E) Site operating plan. The Site Operating Plan shall include information to provide specific guidance and instructions for the management and operation of a scrap tire storage site and should include:

(i) information on security, facility access control, the hours and days during which tire-hauling vehicles will be admitted, traffic control and safety;

(ii) sequence of the development of the scrap tire storage site such as utilization of storage areas, drainage features, firewater storage ponds, trenches, and buildings;

(iii) information on control of loading and unloading of used or scrap tires or tire pieces within designated areas, so as to minimize operational problems at the storage facility;

(iv) fire prevention and control plans, and special training requirements for fire-fighting personnel that may be called for assistance;

(v) vector control procedures for any type of vector that may be found at the scrap tire storage site;

(vi) a procedure for removal of any waste material that is not a used or scrap tire or tire piece to a disposal facility permitted by the commission. This procedure must include the means to remove this illegally deposited waste material. In all cases, such waste shall be removed from the storage area immediately and placed in suitable collection bins, or shall be returned to the transporter's vehicle and removed from the scrap tire storage site. Collection bins must be emptied at least weekly, depending on the amount and type of unauthorized waste. The equipment necessary to meet this objective shall be specified in the design requirements and shall be on site and operable during operating hours;

(vii) the name of the facility employee who is designated by the owner or operator to inspect each load of used or scrap tires or tire pieces that is delivered to the scrap tire storage site. The employee shall have the authority and responsibility to reject unauthorized or improperly manifested loads. The employee shall also be authorized to have unauthorized materials removed by the transporter, assess appropriate disposal fees, and have any unauthorized material removed by on-site personnel;

(viii) a procedure whereby the required transporter manifest, the daily log and other required documents shall be maintained at the scrap tire storage site for a period of three

years and be made available for inspection by the executive director or authorized agents or employees of local governments having jurisdiction to inspect the storage facility;

(ix) dust and mud control measures for access roads, fire lanes, and storage areas within the scrap tire storage site;

(x) posting of signs and enforcement of scrap tire storage site rules;

(xi) procedures for wet-weather operations;

(xii) preventive maintenance procedures for all storage areas, tire processing equipment, fire lanes, fire control devices, drainage facilities, access roads, buildings, and other structures on the scrap tire storage site in use during the active operating period of the scrap tire storage site. A schedule shall be established for periodic inspection of all equipment and facilities to determine if unsatisfactory conditions exist; and

(xiii) incorporation of other instructions as necessary to ensure that the scrap tire storage site personnel comply with all of the operational standards for the facility.

(9) The applicant seeking registration or amended registration for a scrap tire storage site shall submit evidence of financial responsibility in conformance with §330.821 of this title.

(c) Application processing. If an application for registration or amended registration of a scrap tire storage site is received that is not administratively or technically complete, the executive director shall notify the applicant of the deficiencies within 30 working days. If the additional information is not received within 60 days of the date of receipt of the deficiency notice, the executive director may return the incomplete application to the applicant, which shall result in forfeiture of the application review fee. The executive director may extend the response time to a maximum of 270 days upon sufficient proof from the applicant within 60 days of the receipt of the deficiency note that an adequate response cannot be submitted within 60 days. If, however, the applicant does not submit an administratively and technically complete application or sufficient proof of inability within the time frames indicated, the application may be considered withdrawn without prejudice.

(d) Registration expiration. A scrap tire storage site registration shall expire 60 months from the date of issuance. A scrap tire storage site registration is transferable contingent upon executive director approval. A change in the federal tax identification number will constitute a change of ownership. Registrations shall be renewed prior to the expiration date. Applications for renewal shall be submitted at least 60 days prior to the expiration date of the scrap tire storage site registration. Failure to timely file an application for renewal shall result in automatic expiration of the registration.

§330.811. Design Requirements for Scrap Tire Storage Site.

(a) A scrap tire storage site shall be designed so that the health, welfare and safety of operators, transporters, and others who may utilize the site are maintained.

(b) A registered scrap tire storage site may store scrap tires or tire pieces using outdoor or indoor tire piles or enclosed and lockable containers, or a combination of any of the aforementioned methods. Registered scrap tire storage sites shall be limited to a maximum of three piles of whole used or scrap tires on the ground.

(1) Tire piles consisting of scrap tires or tire pieces shall be no greater than 15 feet in height, nor shall the pile cover an area greater than 8,000 square feet. The executive director may grant a variance from the 8,000 square foot pile size requirement if the applicant can demonstrate to the executive director that the requested increased size of the piles is within the fire fighting capabilities of the local area and meets the other applicable requirements of this subchapter. The variance request shall include: the fire marshal's current dated signature on the site layout plan; and a letter from the fire marshal stating that fire protection is adequate for the increased pile size, and that the on-site roads are sufficient to accommodate fire fighting vehicles. If an existing facility requests a variance to increase pile size, the applicant must comply with public notice requirements contained in §330.819 of this title (relating to Public Notice of Intent to Operate). The executive director will receive public comments in consideration of the applicant's variance request.

(2) Scrap tires or tire pieces may be stored in any enclosed building or other type of covered enclosure. Where applicable, local fire prevention codes must be met and appropriate precautions taken. Indoor storage piles or bins shall not exceed 12,000 cubic feet with a 10-foot aisle space between piles or bins.

(3) Scrap tires or tire pieces may be stored in trailers provided the trailer is totally enclosed and lockable.

(c) There shall be a minimum separation of 40 feet between outdoor piles consisting of scrap tires or tire pieces. This 40-foot space shall be designated as a fire lane that totally encircles the tire piles and shall be an all-weather road. Provisions shall be made for all-weather access from publicly-owned roadways to the scrap tire storage site, and from the entrance of the site to unloading and storage areas used during wet weather. The design (a cross-section), location, maintenance, and all-weather serviceability of interior access roads/fire lanes shall be addressed in the overall facility design and in the Site Operating Plan, and shall be indicated on the Site Layout Plan with appropriate design notes. At a minimum, these roadways 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. An estimate shall be provided of the number, size, and maximum weight of vehicles expected to use the site daily. The open space between buildings and outdoor tire piles consisting of scrap tires or tire pieces shall be a minimum of 40 feet; kept open at all times and maintained free of rubbish, equipment, tires, or other materials. In the event that a variance for

supersize piles is approved by the executive director, the minimum fire lane separation shall be at least 40 feet. Upon coordination with the local fire marshal, the distance may be increased, as necessary, to protect human health and safety.

(d) Outdoor piles consisting of scrap tires or tire pieces and entire buildings used to store scrap tires or tire pieces shall not be within 40 feet of the property line or easements of the scrap tire storage site. This setback line shall be kept open at all times and maintained free of rubbish, equipment, tires, or other materials. The executive director may grant a variance to the 40-foot property line or easement if the setback line meets the other applicable requirements of this subchapter and the applicant provides a written statement to the executive director from the local fire marshal that the distance that is the subject of the variance is adequate for fire fighting purposes. In the event that a variance for supersize piles is approved by the executive director, the minimum setback from property lines or easements will be 40 feet.

(e) Scrap tires shall be split, quartered, or shredded within 90 days from the date of delivery to the scrap tire storage site. The executive director may grant a variance from this requirement if the executive director finds that circumstances warrant the exception. Off-the-road tires that are used on heavy machinery, including earthmovers, loader/dozers, graders, agricultural machinery and mining equipment are exempt from this requirement. Truck tires shall not be classified as off-the-road tires and thus are not exempt from this requirement. Appropriate vector controls shall be used at a frequency based upon type and size of piles, weather conditions and other applicable local ordinances.

(f) Access to the facility shall be controlled to prevent unauthorized activities. The facility shall be completely fenced with a gate that is locked when the facility is closed. A scrap tire storage site shall be enclosed by a chain-link type security fence at least six feet in height.

(g) The scrap tire storage site shall have an adequate fire protection system using fire hydrants or a firewater storage pond or tank at the facility. The capacity of a firewater storage pond or tank shall be of sufficient size for firefighting purposes and shall be in conformance with all local and state fire code requirements.

(h) The scrap tire storage site shall have large capacity dry chemical fire extinguishers located in strategically-placed enclosures throughout the entire site, equally spaced within the facility to provide quick access from any location within the facility. The minimum number of fire extinguishers or fire hydrants for each scrap tire storage site shall be one per acre.

(i) If necessary, suitable drainage structures or features shall be provided to divert the flow of rainfall runoff or other uncontaminated surface water within the scrap tire storage site to a location off-site.

(j) Each site shall conspicuously display at the entrance a sign at least 1 ½ feet by 2 ½ feet in size with clear, legible letters stating the name of the scrap tire storage site using the words "scrap tire site," the commission registration number, and operating hours.

(k) A scrap tire storage site located within a designated 100-year floodplain area shall be designed with adequate environmental protection. The owner/operator shall demonstrate that the tire storage area will not restrict the flow of the 100-year flood, reduce temporary water storage capacity of the floodplain, or result in a washout of tires, tire pieces or other material so as to pose a hazard to human health and the environment.

(l) The scrap tire storage site shall be designed in accordance with all local building codes, fire codes, and other appropriate local codes.

§330.812. Scrap Tire Storage Site Record Keeping.

(a) General requirements.

(1) The owner/operator shall maintain on site at all times: a copy of the registration application with all supporting data, including the approved scrap tire storage site layout plan; the approved scrap tire storage site engineering information; a copy of the latest approved closure cost estimate and a copy of the current financial assurance mechanism, as filed with the commission; and a copy of the commission's current rules. The facility supervisor shall be knowledgeable of current commission rules; the contents of the approved scrap tire storage site application; and the approved scrap tire storage site in relation to the operational requirements.

(2) All drawings or other sheets prepared for revisions to a scrap tire storage site layout plan or other previously approved documents, which may be required by this subchapter, shall be submitted in triplicate.

(b) Daily log. Persons that store used or scrap tires or tire pieces under this subchapter shall maintain a record of each individual delivery and removal. Such record shall be in the form of a daily log or other similar documentation approved by the executive director. The daily log shall include, at a minimum, the:

- (1) name and commission registration number of the scrap tire storage site;
- (2) physical address of the scrap tire storage site;
- (3) number of used or scrap tires or tire pieces received at the scrap tire storage site;
- (4) number of used or scrap tires or tire pieces, removed from the scrap tire storage site (for disposal, resale, recycling, reuse or energy recovery);
- (5) specific location in the scrap tire storage site (i.e., tire pile number, bin number, building number, etc.) where used or scrap tires or tire pieces are delivered or removed (for disposal, resale, recycling, reuse or energy recovery);

(6) description of specific events or occurrences at the scrap tire storage site relating to routine maintenance, spraying for vectors, observations of vectors, evidence of vectors, and fire or theft or other similar events or occurrences;

(7) number of used or scrap tires being held for resale, adjustments or other purposes;

(8) name and signature of facility representative acknowledging truth and accuracy of the daily log; and

(9) the name, address, telephone number, and date of the individual or company delivering or removing the used or scrap tires or tire pieces to or from the scrap tire storage site.

(c) Manifests. The scrap tire storage site operator shall retain all manifests received from a scrap tire facility or scrap tire transporter for used or scrap tires or tire pieces delivered to or removed from the scrap tire storage site. The scrap tire storage site shall ensure that the top original of the five-part manifest is returned to the generator completely filled out within 60 days of the date and time of collection as indicated in Section 1 of the manifest form. The scrap tire storage site shall follow the requirement in §330.808 of this title (relating to Manifest System).

(d) Annual report. Scrap tire storage site owners or operators shall report their recycling, reuse, and energy recovery activities to the executive director. The annual report shall be prepared on

a form provided by the executive director, and at a minimum the following information shall be required in the report:

(1) the name, physical address, mailing address, county and telephone number of the scrap tire storage site;

(2) the name, physical address, mailing address, county and telephone number of partners, corporate officers, and directors;

(3) a list of facilities where the scrap tire storage site owners or operators currently deliver used or scrap tires or tire pieces. Each scrap tire recycling or energy recovery facility listed shall include the following information:

(A) phone number of company and responsible person;

(B) physical address and mailing address of the scrap tire facility;

(C) detailed description of process to recycle, reuse or recover the energy from the used or scrap tires or tire pieces;

(D) exact quantities, by month, (in number of tires or weight of scrap tires or tire pieces) that the scrap tire storage site owner or operator delivered to the scrap tire facility.

(e) Local ordinances. Where local ordinances require controls or records more stringent than the requirements of this subchapter, the scrap tire storage site owner or operator shall use such criteria to satisfy the commission's requirements.

§330.813. Scrap Tire Facility Requirements.

(a) Applicability. The regulations contained in this section apply to owners or operators of facilities which process, conduct energy recovery or recycle used or scrap tires or tire pieces.

(b) Storage site registration requirement. If the applicant seeking registration for a scrap tire facility intends to have more than a 30 calendar day supply of tires at the facility site or intends to store in excess of 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers and is solely a scrap tire processing facility with no recycling or energy recovery conducted on-site, then the applicant shall obtain a scrap tire storage site registration in accordance with §330.810 of this title (relating to Scrap Tire Storage Site Registration).

(c) Scrap tire facility registration requirements. Scrap tire facilities shall register their operation with the executive director in accordance with §330.805 of this title (relating to Registration Requirements) prior to starting operations. An application for registration shall be made on a form provided by the executive director upon request. In addition to the General Registration requirements, the following registration information must be provided to the executive director:

(1) Persons that process, conduct energy recovery or recycle used or scrap tires or tire pieces shall submit an application for a registration number from the executive director for the operation of the scrap tire facility.

(2) The application for registration shall be prepared and signed by the applicant. The application shall identify the use of the tires (e.g., the product to be made and the end use market), and shall include information necessary for the executive director to make an evaluation of the proposed operation.

(3) The application for registration of a scrap tire recycling facility shall be submitted as one original and two copies to the executive director with all supporting data also submitted in triplicate unless otherwise directed by the executive director.

(4) Data presented in support of an initial or renewal application for a scrap tire facility shall consist of the following information:

(A) an application form provided by the executive director and location map(s) pursuant to §330.810 of this title;

(B) the maximum amount of tires (in pounds) that will be on the scrap tire recycling facility at any given time;

(C) the amount of tires necessary to provide a 30 calendar day raw material supply for the proposed recycling process;

(D) the storage method (piles on the ground, piles inside a building or enclosure, or totally enclosed and lockable containers that are locked during non-operational hours);

(E) the product to be manufactured and the end use market;

(F) a property owner affidavit on a form provided by the executive director pursuant to §330.810 of this title; and

(G) a list of all other applicable federal, state, and local permits and/or registrations with the associated numbers;

(5) Persons that conduct energy recovery shall obtain all other applicable authorizations (i.e., permits and/or registrations) necessary for conducting tire related activities prior to submittal of an application for registration as a scrap tire facility.

(d) General requirements.

(1) Where local ordinances require controls and records more stringent than the requirements of this subchapter, scrap tire facility operators shall use such criteria to satisfy commission requirements under this section.

(2) Stockpiles of used or scrap tires or tire pieces at the processing location that are awaiting splitting, quartering, shredding, processing or recycling shall be monitored for vector control and appropriate vector control measures shall be applied when needed, but in no event less than once every two weeks.

(3) If a scrap tire facility does not intend to provide its own fire fighting personnel or system, the facility shall make arrangements with public or private emergency response personnel that are capable of complying with applicable fire and building codes. In addition, the scrap tire energy recovery facility shall provide a letter from the fire marshal within whose jurisdiction the scrap tire energy recovery facility is located stating that the fire marshal has reviewed and approved the fire protection system.

(4) The owner or operator of the scrap tire facility shall operate the vehicles and equipment to prevent nuisances or disturbances to adjacent landowners.

(5) A scrap tire facility operator shall submit to the executive director an annual summary of facility activities from January 1 through December 31 of each calendar year, showing the number and type of scrap tires received, amount by weight of tires shredded, processed, burned for energy recovery or recycled, and the amount by weight of tire pieces removed from the facility. If the tire pieces were delivered to an end user, the annual report shall include the name of the end user, type of end user and the date of delivery to the end user. The annual report shall be submitted no later than March 1 of the year following the end of the reporting period. The report shall be prepared on a form provided by the executive director.

§330.814. Requirements for a Scrap Tire Transportation Facility.

Any person storing tires for periods longer than 30 calendar days at transportation facilities such as marine terminals, rail yards or trucking facilities, shall register the facility with the executive director on a form provided by the executive director and comply with all applicable requirements contained in §330.805 of this title (relating to Registration Requirements).

§330.815. Tire Monofill Permit Required.

(a) In accordance with §330.4(a) of this title (relating to Permit Required), no person may cause, suffer, allow, or permit the underground disposal or placement of tires or tire pieces into a tire monofill unless such activity is authorized by a permit from the commission. No person may commence physical construction of a tire monofill without first having submitted a permit application in accordance with §§330.50-330.65 of this title (relating to Permit Procedures) and received a permit from the commission.

(b) A separate permit is not required for the underground disposal or placement of tires or tire pieces into a tire monofill if the underground disposal or placement occurs within the permit boundary at a permitted municipal solid waste landfill site. Such disposal or placement shall be conducted only as authorized by the approved site development plan, or by a permit modification or amendment, as appropriate.

§330.816. Land Reclamation Projects Using Tires (LRPUT).

(a) Any person or entity intending to initiate a LRPUT shall notify the executive director in writing of the intent to fill land by means of a LRPUT. Owners/operators of LRPUTs are required to provide information to the executive director as part of the notification document as described in paragraph (1) of this subsection. Approval in writing by the executive director (authorization to proceed) is required before the reclamation project may be initiated. The executive director may withhold authorization to proceed if the information submitted is not deemed to be complete. The

executive director shall have 60 days to review the notification documents for completeness. The executive director may request additional information if the executive director determines that the notification submittal does not address all requirements of this rule. The following information shall be submitted in the notification document or attachments thereto:

(1) The owner/operator of the LRPUT shall disclose in the notification the location of the project on a state highway map, United States Geological Survey map or similar, and provide a legal description of the property. The general location on the site where fill activities will take place shall be shown on one or more of these maps;

(2) A property owner's affidavit shall be submitted at the time of notification of intent to initiate a LRPUT and shall include the following:

(A) Legal description of the property on which the LRPUT will occur;

and

(B) Acknowledgment that the owner has a responsibility to file with the county deed records an affidavit to the public advising that a reclamation project utilizing tire pieces exists on the site, and providing details about the location of the filled area within the property boundaries, areal extent of the fill project, coordinates or survey data, and the approximate volume or weight of tires which were used as fill, at such time as the fill project has been completed;

(3) The approximate volume of tire pieces proposed to be placed below ground, or the equivalent number of whole tires, and the approximate size and depth of the depression or borrow area to be filled shall be disclosed in the notification document;

(4) The approximate period of time during which the project will be conducted shall be disclosed, with estimated start and finish dates;

(5) A statement signed and sealed by a professional engineer licensed to practice in Texas shall be submitted in the notification to the executive director to certify that the LRPUT is designed in a manner that will comply the following standards:

(A) The LRPUT shall not cause a discharge of solid waste or pollutants adjacent to or into the waters of the state, including ground water, that is in violation of the requirements of the Texas Water Code, §26.121;

(B) The LRPUT shall not adversely affect human health, public safety or the environment, either during fill operations or after the reclamation project is complete; and

(C) Tire or tire pieces shall not be placed below ground for the purpose of disposal as defined in Health and Safety Code §361.003(7);

(6) An affidavit signed by the property owner shall be submitted certifying that:

(A) the borrow area, whole or disturbed land area existed prior to the project; was excavated for another purpose; and was not excavated for the burial of tire pieces;

(B) the LRPUT will be completed in a manner that will comply with all regulations set forth in this subchapter and any other rules of the commission or any other local, state or federal agency which apply; and

(C) the local fire marshal has been notified of the tire placement or fill activity.

(b) Undisturbed land shall not be excavated for the purpose of filling the same land with a mixture of tires and debris or soil. Any borrow area, hole or other disturbed land area to be used for a LRPUT must have existed prior to the project, and it must have been excavated or soil removed for a purpose other than for the burial of tire pieces.

(c) The LRPUT shall not result in a public nuisance.

(d) The owner/operator of the LRPOT shall notify the local fire marshal or fire department serving the area of the tire placement or fill activity.

(e) All tires used to fill land shall be split, quartered or shredded. Whole tires shall not be placed below ground.

(f) The owner/operator of the LRPOT shall comply with all applicable local ordinances, including any public safety or zoning/land use laws which may be in effect.

(g) Shredded, split or quartered tires placed below ground shall be mixed in a proportion no greater than approximately 50% by volume with natural, inert material acceptable for filling land, such as rubble, soil, or rocks. If greater than 50% of tire pieces by volume are placed below ground, the site is considered a tire monofill and is subject to §330.815 of this title (relating to Tire Monofill Permit Required).

(h) Tire pieces shall be placed no closer than 18 inches to the final grade or ground surface. A soil cover unadulterated with tire pieces shall make up at least the upper 18 inches of the reclamation project.

(i) The owner/operator of the LRPOT shall register as a scrap tire facility if a shredding operation is conducted on site for the processing of tires.

(j) The owner/operator of the LRPOT shall register as a scrap tire storage site if:

(1) operations requiring storage of more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers would qualify the site as a registered tire storage site under §330.810 of this title (relating to Scrap Tire Storage Site Registration); or

(2) the LRPOT extends beyond 90 days from the date of delivery of tires or tire pieces to the site.

(k) The executive director shall issue an identifying number at the time the approval letter for the LRPOT is issued. This identifying number shall be referenced in any correspondence relating to a particular LRPOT for which such a number is issued.

§330.817. Special Authorization Priority Enforcement List (SAPEL).

(a) SAPEL.

(1) General. The SAPEL consists of scrap tires generated in specially designated counties or regions which are identified by the executive director as areas which are not receiving adequate collection service and which pose a threat to public health and safety or the environment.

(A) The executive director may designate collection entities as necessary to ensure continuous and adequate collection of SAPEL tires.

(B) The executive director may impose certain conditions on the SAPEL tire collection activities of designated collection entities as necessary to minimize disruption of activities at the generator locations and any other actions consistent with this subsection that are necessary to carry out the purposes of this section.

(C) Implementation of this section is not intended to impair or reduce existing generator collection in areas of the state containing SAPEL tires if adequate collection service is currently provided.

(2) Relationship to priority enforcement list (PEL). Unless otherwise provided by the executive director, the requirements in §330.818 of this title (relating to Priority Enforcement List (PEL) Program) do not apply to the SAPEL or SAPEL process.

(3) Generator responsibility. A generator desiring to have tires located at his site listed on the SAPEL shall cooperate fully with executive director instructions. A generator shall make his site available for access by designated collection entities for SAPEL tire collection. Failure to comply may result in tires at that site being ineligible for listing on the SAPEL.

(b) SAPEL contract.

(1) The executive director may contract with designated collection entities as necessary to ensure adequate collection of SAPEL tires.

(2) As part of the SAPEL contract, a designated collection entity may be required to comply with the following:

(A) for entities currently providing scrap tire collection, proof that their participation in the SAPEL contract process shall not impair or reduce their existing generator collection routes;

(B) attempt to the maximum extent possible to deliver SAPEL tires to an end user;

(C) special manifesting and reporting requirements;

(D) provide proof of ability to ensure adequate collection service for sites containing SAPEL tires; and

(E) any other requirements as necessary which are consistent with this section, and which will facilitate cleanup of SAPEL tires and protect human health, safety, and the environment.

§330.818. Priority Enforcement List (PEL) Program.

(a) PEL program.

(1) Applicability. This section applies to the creation and maintenance of the PEL and the identification of illegal scrap tire sites, and the determination of a Potentially Responsible Party (PRP).

(2) PEL procurement. The executive director may issue contracts to procure cleanups for the removal of tires from such sites through a competitive bid process conducted in accordance with the provisions of the State Purchasing and General Services Act (Article 601b, Vernon's Civil Texas Statutes) applicable to contract for services. The executive director may elect not to enter into contracts under this section. If no reasonable bids are submitted under the procurement process for the cleanup of PEL sites, or at the executive director's discretion, the executive director may rebid the PEL sites.

(b) PEL.

(1) The PEL shall be a list maintained by the executive director containing piles of scrap tires or tire pieces in excess of 500 and defined as illegal scrap tire sites identified prior to December 31, 1997 and classified by the executive director. This list shall be used by the executive director for the awarding of sites to successful contract bidders. The scrap tires or tire pieces obtained from the PEL sites are eligible for payment according to contract guidelines.

(2) The executive director may, on an as needed basis, and with notice, recontract or execute additional contracts for any PEL site identified and contracted in the state.

(3) Members of the commission, employees or agents of the commission, and authorized scrap tire facilities or their subcontractors are entitled to enter any public or private property at any reasonable time for the purpose of inspecting, investigating or remediating any condition related to illegal dumping of scrap tires.

(4) An authorized contractor or subcontractor is entitled to enter property only at the executive director's direction. The executive director shall give notice of intent to enter private property for those purposes by certified mail to the last known address indicated in the current county property records at least ten days before a commission member, commission employee or agent or authorized contractor or subcontractor enters the property. A commission member, commission

employee or agent or authorized contractor or subcontractor who, acting under this subsection, enters private property shall:

(A) observe the establishment's rules concerning safety, internal security, and fire protection; and

(B) if the property has management in residence, make a reasonable attempt to notify the management or person in charge of the entry and exhibit credentials.

(5) Authorized contractors and their subcontractors shall not be considered agents of the state and are solely responsible for their own actions and actions of their agents.

(6) Once a PEL site has been cleaned up, property owners shall not be eligible for future cleanup assistance as a result of further tire deposition on the owners' property.

(c) PEL scrap tire site cleanup contract.

(1) Authorized scrap tire facilities that intend to receive payment shall enter into a PEL scrap tire site cleanup contract as a guarantee of job performance.

(2) Should the authorized facility's registration to utilize scrap tires or tire pieces be suspended or revoked by the executive director pursuant to §330.805 of this title (relating to Registration Requirements), then the PEL sites remaining in the PEL Scrap Tire Site Cleanup Contract shall be rebid.

(d) Authority of commission personnel.

(1) The contractor shall report on the status of the cleanup activities at the PEL site to the executive director in the time frame and manner requested.

(2) The executive director shall have the authority to suspend cleanup activities at a PEL site following a determination of whether the conditions and/or activities at the PEL site or other circumstances warrant the temporary suspension of cleanup activities to ensure the protection of public health and safety or the environment.

(3) The executive director may undertake immediate remediation of a site if, after investigation, the executive director finds:

(A) that there exists a situation caused by the illegal dumping of scrap tires that is causing or may cause imminent and substantial endangerment to the public health and safety or the environment; and

(B) the immediacy of the situation makes it prejudicial to the public interest to delay action until an administrative order can be issued to PRPs or until a judgment can be entered in an appeal of an administrative order.

(4) If a person ordered to eliminate an imminent and substantial danger to the public health and safety or the environment has failed to do so within the time limits specified in the order or any extension of time approved by the executive director, the executive director may implement a remedial program for the site.

(5) The commission or executive director may seek to bring suit against a PRP to recover reasonable expenses incurred in undertaking immediate removal of tires or in implementing a remedial action order. For purposes of this subchapter, the following three criteria shall be used to determine whether a person is a PRP:

(A) the person must be the property owner of record, the site operator or the depositor of the scrap tires on the site;

(B) the person must have benefitted financially from the disposition of the scrap tires on the site; and

(C) the person must be financially capable of paying all or part of the costs of the cleanup as determined by the commission.

(6) The commission or executive director shall seek to file the suit to recover costs not later than one year after the date removal or remedial measures are completed.

(7) The commission or executive director, in lieu of bringing suit to recover costs incurred under this subchapter, may seek to file a lien against the property on which the site is located. The lien shall state the name of the owner of the property, the amount owed, and the legal description of the property. The lien arises and attaches on the date the lien is filed in the real property records of the county in which the property is located. The lien is subordinate to the rights of prior bona fide purchasers or lienholders of the property.

§330.819. Public Notice of Intent to Operate.

(a) Scrap tire storage sites that are registered with the executive director shall publish notice in the county where they intend to store used or scrap tires or tire pieces prior to commencement of operation. Subject to executive director approval, a variance to the public notice requirement may be requested provided that similar notice has been published within the previous 12-month period and that the notice was associated with activities under the jurisdiction of this subchapter.

(b) Scrap tire facilities that are registered with the executive director and have submitted an application amendment to request a variance from the 8,000 square feet pile size shall publish notice of intent to increase the pile size in accordance with this section.

(c) The notice of intent published by the scrap tire storage site owner shall contain at a minimum the following information:

- (1) the facility registration number;
- (2) the name under which the facility registration number was issued;
- (3) the permanent street address and telephone number of the facility;
- (4) a brief statement explaining the utilization activities the facility intends to perform at the location;
- (5) where the tires intended for utilization or already utilized will be stored, if different from the actual facility site; and
- (6) the number of tire piles planned for the storage facility and the square footage of the largest pile planned.

(d) The public notice of intent to operate shall identify the Texas Natural Resource Conservation Commission as the state agency regulating this activity.

(e) The public notice of intent shall be published at least 30 days prior to commencing activities. The public notice of intent shall be published for a period of 10 days continuously. In counties where no daily newspaper is published, the notice shall be published at least once each week for three consecutive weeks.

§330.820. Motion for Reconsideration.

A person effected by a registration under this chapter may file a Motion for Reconsideration pursuant to §50.39 of this title (relating to Motion for Reconsideration), notwithstanding §50.31 of this title (relating to Purpose and Applicability).

§330.821. Closure Cost Estimate for Financial Assurance.

(a) As part of a facility's registration application, an owner or operator of a scrap tire storage site must prepare a written estimate, certified by a professional engineer, in current dollars, of the cost of hiring a third party to close the facility(ies). The closure cost for scrap tire storage sites is determined by the sum of paragraphs (1) and (2) of this subsection:

(1) The estimated cost for a third party to transport and dispose of the maximum site capacity of used or scrap tires and tire pieces as depicted by the site layout plan. The estimate shall include equipment and operator time for loading tires and disposal costs.

(2) The estimated cost for a third party to complete cleanup of the site of any and all debris, as well as dismantling any equipment used in the processing of whole tires into shreds or used to recycle whole tires or shredded tires into manufactured products, securing the site, and preventing access to the equipment or removing it from the site to a location acceptable to the executive director; or the amount of \$3,000, whichever is greater.

(b) The closure cost estimate must equal the cost of closing the facility based on the maximum number of whole tires stored at the facility, the maximum volume of tire pieces, and disabling any equipment as disclosed in the facility's registration application. The executive director shall evaluate and determine the amount for which evidence of financial assurance is required. The closure cost estimate provided by the owner or operator may be amended by the executive director. In some cases, the closure cost estimate may not be sufficient which means that the owner or operator remains responsible for the entire costs to close the site.

(c) Any amendment application shall include a recalculation of the closure cost estimate based on any requested volume increases. Facilities shall not increase the volume of whole tires or tire pieces generated from out of state and stored at the facility until the registration amendment has been approved

by the executive director. Only upon approval of the executive director will the amended registration closure cost estimate be the basis for determining the amount of financial assurance required.

(d) The quantities of scrap tires reported on the registration application form and used in the calculation of financial assurance shall be obtained from the site layout plan volumes by using the following conversion factors:

(1) a typical whole tire shall be considered to occupy four cubic feet unless an exact count of all whole tires is to be maintained by an operator and shall be considered to weigh 20 pounds; and

(2) a cubic yard of tire shreds or pieces shall be considered to weigh no more than 950 pounds; however, other verifiable data may be used if accepted and approved by the executive director.

(e) The calculated capacity of a site as calculated for closure may not be exceeded without the submission and approval of an amended registration application specifically including, but not limited to, new site layout plans to substantiate the revised capacity and new closure calculations based upon the depicted volumetric capacity converted to weights, posting of the revised financial assurance and written approval for the amended registration. The owner or operator is also responsible for submitting a registration amendment to revise the closure cost estimate whenever requested to do so by the executive director. Registration amendments with revised closure cost estimates shall be submitted to

the executive director within 15 days of the executive director's written request to revise the closure cost estimate.

(f) The owner or operator must keep at the facility during the operating life of the facility a copy of the latest approved closure cost estimate and a copy of the current financial assurance mechanism.

(g) Financial assurance required under this section shall be provided in accordance with §37.3001 of this title (relating to Applicability) and §37.3011 of this title (relating to Financial Assurance Requirements for Scrap Tire Sites).

(h) Closure will begin when:

(1) the executive director deems the facility abandoned; or

(2) the registration expires, is terminated, or revoked or a new or renewal registration is denied; or

(3) closure is ordered by the Texas Natural Resource Conservation Commission or a United States District Court or other court of competent jurisdiction.

(i) Following a determination that the owner or operator has failed to perform closure in accordance with the registration requirements when required to do so or when closure begins under the circumstances outlined in subsection (h) of this section, the executive director may terminate or revoke the registration and draw on the financial assurance funds.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority to adopt.

Issued in Austin, Texas, on December 18, 1997.