

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §330.4 and §330.65, concerning municipal solid waste management.

EXPLANATION OF PROPOSED RULE

The purpose of these rules is to modify existing rule language regarding municipal solid waste (MSW) transfer station authorization and design requirements. The proposed rules will clarify that an MSW transfer station may be authorized within the permitted boundaries of any MSW landfill, including a Type IV landfill, with a registration instead of a permit. The proposed rules will also prohibit construction of transfer stations before authorization, modify transfer station odor control criteria, specify public notice requirements, and provide for a motion for reconsideration.

The executive director has received comments that existing rules are unclear with respect to the level of authorization required for an MSW transfer station located within the permit boundary of a Type IV facility. A Type IV facility is a type of MSW facility that is authorized by the commission for the disposal of brush, construction-demolition waste, and rubbish that is free of putrescible and household wastes. This proposed rule will clearly state that an MSW transfer station may be authorized to operate at an existing Type IV facility by registration as opposed to a permit. One of the primary differences between a registration and a permit is that a contested case hearing has historically not been required in the MSW program for MSW program registered facilities. The commission has been directed by Texas Health and Safety Code, §361.0861 and §361.111, to register certain kinds of transfer stations and to exempt them from permits.

This rule will prohibit construction of a transfer station prior to completion of the authorization process. The new prohibition is in response to questions raised during a recent contested case hearing regarding whether construction of a facility prior to commission authorization effectively limits the commission's ability to provide comment on and request changes to proposed facility design or operational standards during the application review period and biases the commission's decision toward authorization. The proposed prohibition is similar to existing policy for some MSW facilities such as liquid waste transfer, and grease and grit trap waste processing facilities.

Odor control standards have been strengthened in response to questions voiced by protestants during a contested case hearing and address situations where potentially highly odorous waste material is brought to a transfer station located within the permit boundary of a landfill that is not accepting potentially highly odorous waste. Protestants questioned whether the design and operational requirements contained within existing rules relating to transfer stations provide adequate nuisance odor control and are sufficiently protective of area neighborhoods regarding nuisance odor issues. The proposed rule would require a transfer station operator to control openings to process buildings to prevent releases of nuisance odors to the atmosphere; properly maintain and operate all odor control equipment; and to employ odor control measures. The odor standards proposed by this rule are essentially the same as those contained in existing rules for transfer stations that recover material from the waste stream (existing 30 TAC 330.65(f)(2)).

Public notice requirements are proposed which will provide notification to the public prior to facility authorization that a transfer station authorization is pending and that a public meeting has been

scheduled. The proposed public notice requirements are in response to comments provided at a contested case hearing that existing transfer station rules do not require an applicant to provide notice of public meeting prior to facility authorization. The proposed rule will update the public notice rule reference and also establish public notice requirements that are consistent with those required for similar MSW facility registrations (existing 30 TAC 330.71(d)(2)).

An opportunity for a motion for reconsideration has been added as a result of questions from outside parties and to be consistent with current policy for similar facilities. Outside parties correctly stated that although other MSW registrations allow for a motion for reconsideration, existing MSW transfer station rules do not contain a motion for reconsideration provision. In accordance with the proposed rule, a motion to request the commission to reconsider a decision to approve a registration may be filed. The proposed motion for reconsideration provision is consistent with an existing commission rule for registered facilities (existing 30 TAC 332, section 332.35(e)).

Section 330.4(d)(4) is proposed to be amended to clarify that a transfer station can be authorized on any MSW landfill via a registration. This proposed change is to clearly state that transfer stations may be located on Type I, Type II, Type III, or Type IV landfill facilities by means of a registration in lieu of a permit. Previously, the rules and program practice was to allow the establishment of MSW transfer stations on landfills by registration, but the rule language did not explicitly state that MSW transfer stations could be authorized on Type IV landfills. A Type IV facility is a type of MSW facility that is authorized by the commission for the disposal of brush, construction-demolition waste, and rubbish, that are free of putrescible and household wastes.

Section 330.4(q) is proposed to be amended by deleting language that references §330.65(f). Portions of §330.65(f) regarding air pollution control are being moved to §330.65(e)(5) for organizational purposes to consolidate air pollution requirements and this reference to §330.65(f) will no longer be accurate, and consequently it will be deleted.

Section 330.4(q)(5)-(7) is proposed to be modified in order to delete unnecessary language providing for the suspension and/or revocation of transfer facility operation. The suspension of operations language was for the situation where registered transfer facilities are operated in a manner that causes or results in a nuisance. The commission is responsible for all actions regarding solid waste management. In instances where nuisance conditions are found to be occurring, remedies through normal enforcement procedures may be sought by the commission. The commission is authorized to suspend and/or revoke registrations under the general authority of the Texas Health and Safety Code, Chapter 361, the Solid Waste Disposal Act, §§361.011; §7.303, Texas Water Code; and 30 Texas Administrative Code §305.66 (relating to Permit Denial, Suspension, and Revocation).

Section 330.65(b)(1) is proposed to be amended to prohibit transfer facility construction prior to authorization. The new prohibition is in response to questions raised during a recent contested case hearing regarding whether construction of a facility prior to commission authorization effectively limits the commission's ability to provide comment on and request changes to proposed facility design or operational standards during the application review period and biases the commission's decision toward authorization.

Section 330.65(b)(2) is proposed to be amended to add the requirement that transfer station facilities registered under the proposed rules must initiate facility construction within two years of obtaining a registration, or within two years of the conclusion of the appeals process whichever is longer, or the registration will automatically terminate and no longer be effective. Section 330.65(b)(2) also proposes a requirement that transfer station facilities registered under previous a rule must begin facility construction within two years of the effective date of the proposed rules, or within two years of the conclusion of the appeals process whichever is longer, or the registration will automatically terminate and no longer be effective. The proposed registration termination provision will ensure that construction of registered transfer stations begins within a period of time the commission considers reasonable. The proposed registration termination provision is consistent with an existing commission rule for liquid waste processing facilities (existing 30 TAC 330.71(d)(6)).

Section 330.65(b)(3) is proposed to be amended to add language causing the automatic withdrawal of registration applications filed under the proposed rule which have not completed all registration requirements within one year of filing. It will also result in the automatic withdrawal of transfer facility registration applications filed under a previous rule that have not completed all registration requirements of this section within one year of the effective date of the proposed rule. Under current rule, transfer station applicants often prolong the authorization process by satisfying §330.65 registration requirements with the exception of the public meeting notice. This delay results in additional tracking and processing activities that the commission believes to be unnecessary. The proposed application withdrawal provision would ensure that transfer station applications filed under previous and proposed rule are processed within a period of time the commission considers reasonable.

The commission estimates that there are 23 registration applications currently pending of which approximately 5 may be affected by this rule. The average amount of time to process an MSW registration is approximately 180 days. It is believed that one year is sufficient time to complete registration requirements.

A proposed modification to §330.65(d)(2) states the contents expected for a site plan. The contents of a site plan under §330.65(d)(2) include information regarding the site boundary, access to public roadway, site access control features, site drainage features, and pertinent design information as determined by the executive director.

A proposed modification to §330.65(d)(3)(C) only reflects a change in a reference made in a previous rulemaking regarding the notice of public meetings.

The proposed amendment to §330.65(d)(3)(D) will require the registration application to include a list of landowners located within 500 feet of the facility, their addresses, and a map locating their property. The information required by this section will be used in notifying landowners located within 500 feet of the site of a public meeting, issuance of the registration, and rights of the public regarding motions for reconsideration.

A proposed modification to §330.65(d)(7) updates a reference and makes the intent more explicit regarding evidence of financial assurance. It is the current program practice to require financial assurance for registered transfer stations. The proposed rule will ensure this practice will be continued

by modifying the existing language to specifically require financial assurance for transfer stations. The proposed rule will not increase the financial assurance amount currently required for registered transfer station facilities.

A proposed modification to §330.65(d)(8) regarding the applicant's statement merely rearranges a form and no new requirements are established.

The proposed change to §330.65(e)(5) establishes an odor standard for these facilities. In general the facility is required to be designed and operated to prevent nuisance odors from leaving the property boundary of the facility. This odor standard is consistent with one currently found in an existing rule for transfer stations that recover material from the waste stream (existing 30 TAC 330.65(f)(2)).

Also, the proposed amendment to §330.65(e)(5), regarding odor control for MSW transfer stations, identifies the standards and measures to be used for ventilation and odor control at MSW transfer stations. The proposed ventilation and odor control standards and measures are consistent with those required for transfer stations that recover material.

Also, the proposed change to §330.65(e)(5) adds discretionary language to the odor and ventilation control measures that must be employed by allowing the executive director to exercise discretion regarding types of odor and ventilation control equipment to be employed.

The proposed change to §330.65(f) moves language regarding odor control to §330.65(e)(5).

The proposed change to §330.65(f)(2) regarding the operational design standards adds language which states that transfer station operational design standards must be included in the site operating plan.

Proposed new §330.65(g) establishes a means for a motion for reconsideration once a registration has been issued allowing affected persons a means of appealing the registration decision.

The proposed rule removes references to air quality permitting requirements as these requirements are contained in other commission rules. All facilities constructed pursuant to this registration which are sources of air pollution (including odor control and air pollution abatement devices) are required to obtain authorization pursuant to Chapter 116 (relating to Control of Air Pollution by Permits for New Construction or Modifications) prior to start of construction, or qualify for exemption from air quality permitting under Chapter 106.

The statutory basis for the rules is found in the Texas Health and Safety Code, Chapter 361, the Solid Waste Disposal Act, §§361.011, 361.024, 361.0861, and 361.111.

FISCAL NOTE

Matthew Johnson, Financial Administration Division, has determined that for the first five-year period the sections as proposed are in effect there will be fiscal implications as a result of administration and enforcement of the sections. The effect on state government will be a reduction in the costs of processing MSW registration applications where previously permit applications were required. These savings, which are prospective and cannot be determined at this time, are not anticipated to

significantly reduce agency operating costs, as the number of instances is relatively few where permits were previously required but would no longer be required under the proposed rules. Generally, there are no significant fiscal implications anticipated for state or local governments as a result of enforcement or administration of the section.

Some small businesses could be affected by provisions of the proposed rule. The provisions of these rules for public notice represent a potential cost to small and large businesses, as well as local governments, to the extent that local governments operate MSW transfer stations. The new costs for public notice are estimated to range from \$500 to \$3000 depending on the publication charges of the local newspaper. Also, the odor control provisions of these rules could, if required, increase a small business or any operator's costs to operate or capitalize a transfer station, depending on the control method selected. Such costs could range from \$0.00 for addition of on-site buffer for odor control at sites where the registrant already owns sufficient acreage to comply with the buffer requirements of the proposed rules to as much as \$30,000 for a mechanical odor control device such as an air scrubber. In contrast to these potential cost increases, operators of MSW transfer stations may realize cost savings where registrations now will replace permits as authorizations to operate. A comparison between small business and large business costs of the proposed rule changes has been prepared. A small business having a range of employees of 1 to 100 will have costs between \$330 and \$33,000 per employee for the highest possible expenditures associated with both the public notice requirements and odor control requirements. For a large business having 70,000 employees, the costs will be \$.47 per employee for the highest possible expenditures associated with both the public notice requirements and odor control requirements. Texas Government Code, §2002.006(a) requires a state agency considering the adoption

of a rule that would have an adverse economic effect on small businesses to reduce that effect if doing so is legal and feasible considering the purpose of the statute under which the rule is to be adopted.

Texas Government Code, §2006.002(b) authorizes an agency to reduce the effect on a small business by: establishing separate compliance or reporting requirements for small businesses; through the use of performance standards in place of design standards for small businesses; or by exempting small businesses from all or part of the rule. The commission has chosen to reduce the effect on a small business by the use of performance standards in place of design standards. The performance standard used is in proposed §330.65(e)(5)(C). Section 330.65(e)(5)(C)(i)-(iv) provides the measures to meet the performance standard. The commission has provided two options in the proposed rule by which the adverse effect, on any registrant, including a small businesses, regarding odor control requirements can be avoided. Small businesses can avoid additional odor control costs by using on-site buffer zones for odor control or using additional waste handling procedures, storage procedures, and clean-up procedures for odor control when accepting putrescible waste._____

PUBLIC BENEFIT

Mr. Johnson also has determined that for the first five-year period the sections as proposed are in effect the public benefit anticipated as the result of enforcement of and compliance with the sections will be more cost-effective regulation and control of municipal solid waste.

The effect of the sections as proposed will be to increase the potential costs of obtaining authorization to operate these types of facilities for solid waste management due to public notice requirements. Some additional costs for the facility operation may occur due to possible odor control measures. There are

some small potential economic costs identified for individuals subject to the sections as proposed and these costs are addressed above.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the 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). The rule does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the rule is designed to protect the environment and reduce the risk to human health from environmental exposure.

The economy, a sector of the economy, productivity, competition, or jobs, will not be adversely affected in a material way because the additional costs caused by the rule are minimal when compared to the revenue that may be generated by such a facility. The rules will potentially add costs for notice to be provided to the public and may add additional costs for odor control. The additional costs added by this rule are not substantial when compared to the revenue that the facility may generate. The additional costs added by this rule are a one time only cost. Additional costs for odor control may be avoided by using one of two options. One low cost odor control option is to use clean-up and management procedures for odor control, and the other low cost odor control option is to use additional buffer space that is normally available at landfills and is frequently available in rural areas.

Public notice costs are usually lower in rural areas and are based on the costs attributed to newspaper publication of the public notice. Consequently, additional costs for these facilities to be located in a rural area will be minimal. The public notice costs will be the same as for similar MSW registered facilities. In contrast to these potential cost increases, operators of MSW transfer stations may realize cost savings where registrations will replace permits as authorizations to operate.

The rule does not adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state, because the rule is designed to protect the environment and reduce the risk to human health from exposure to nuisances.

The purpose of these rules is to modify existing rule language regarding municipal solid waste transfer facility authorization requirements and design requirements. The proposed rules will clarify that a transfer facility can be established on any municipal solid waste landfill including a Type IV landfill with a registration authorization, prohibit construction of transfer stations prior to authorization, modify transfer facility odor control criteria, specify public notice requirements, and provide for a motion for reconsideration. The proposal is not directly related to and does not result in the protection of the environment or human health; only carries out a requirement of state law.

This proposal does not exceed a standard set by federal law and is specifically required by state law (§361.0861 of the Texas Health and Safety Code, Chapter 361, Solid Waste Disposal Act). Permit exemptions for MSW transfer facilities are authorized by Texas Health and Safety Code, Chapter 361, the Solid Waste Disposal Act, §361.0861 and §361.111. One of the primary differences between a

registration and a permit is that a contested case hearing has historically not been required in the MSW program for MSW program registered facilities although a costly contested hearing is potentially required for a permitted facilities. The commission has been directed by Texas Health and Safety Code, §361.0861 and §361.111, to register certain kinds of transfer facilities and to exempt them from permits.

This proposal does not exceed the requirements of a delegation agreement or contract between the state and federal government, as there is no agreement or contract between the commission and the federal government concerning MSW transfer facilities.

The rules are not proposed solely under the general powers of the commission; instead, they are proposed under a specific state law. The proposed changes to §330.4 and §330.65 are not being made under the general powers of the commission. Rather, the changes are being made under the requirements of a specific state law that allows the commission to exempt MSW transfer stations from permits, allows the commission to establish rules for the design and operational requirements for MSW transfer stations, and requires a public meeting on each new transfer station. Specific state law includes, Texas Health and Safety Code, Chapter 361, §361.0861 and §361.111, Solid Waste Disposal Act.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that Assessment. The specific purpose

of the rules is to adopt a set of rules that modify authorization, design, and operation requirements for municipal solid waste transfer stations. The proposed rules would substantially advance this stated purpose by adopting rules that follow the requirements of a specific state law that allows the commission to exempt MSW transfer stations from permits, allows the commission to establish rules for the design and operational requirements for MSW transfer stations, and requires a public meeting on each new transfer station. Specific state law includes Texas Health and Safety Code, Chapter 361, §361.0861 and §361.111, Solid Waste Disposal Act. Promulgation and enforcement of these rules will somewhat burden private real property that is the subject of the rules because the proposed changes will limit or restrict a person's rights in private real property by adding additional costs for notice to be provided to the public and may add additional costs for odor control. The additional costs added by this rule are not substantial when compared to the revenue that the facility may generate. The additional costs added by this rule are a one time only cost. Additional costs for odor control may be avoided by using one of two options. One low cost odor control option is to use clean-up and management procedures for odor control, and the other low cost odor control option is to use additional buffer space that is normally available at landfills and is frequently available in rural areas. Public notice costs are usually lower in rural areas and based on the costs attributed to newspaper publication of the public notice. Consequently, additional costs for these facilities to be located in a rural area will be minimal. The public notice costs as proposed will be the same as those costs for similar MSW registered facilities. In contrast to these potential cost increases, operators of MSW transfer stations may realize cost savings where registrations now will replace permits as authorizations to operate. These cost savings may be expected in lowered legal and consulting fees because a public hearing will not be required. The rules are necessary to advance the agency's mission of providing

adequate public health and safety relative to the management of municipal solid waste. The rules will provide significant changes regarding the procedures and criteria to be used by the commission and the regulated community in the requirements for the review and approval of registration applications for regulated activities under this chapter.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking action is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning consistency with the Texas Coastal Management Program. As required by 31 TAC§505.11(b)(4) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, agency rules regarding solid waste management must be consistent with the goals and policies of the CMP to protect the coastal area.

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 transfer station rule modifications will encourage safe and appropriate storage, management, and treatment of municipal solid waste, which will result in an overall environmental benefit across the state, including 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.

Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rule is consistent with CMP goals and policies, and the rule will have a negligible impact upon the coastal area.

PUBLIC HEARING

A public hearing on this proposal will be held January 14, 1999, at 10:00 a.m. in Room 2210 of TNRCC Building F, located at 12100 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 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.

SUBMITTAL OF COMMENTS

Written comments regarding this proposal may be mailed to Bettie Bell, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98010-330-WS. Comments must be

received by 5:00 p.m., January 18, 1999. For further information, please contact Wayne Lee, of the Waste Policy and Regulations Division, at (512) 239-6815.

STATUTORY AUTHORITY

The amended section is proposed under the authority of the Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and pursuant to the Texas Solid Waste Disposal Act, Texas Health and Safety Code, §361.024, which provides the commission with the authority to regulate municipal solid waste and adopt rules as necessary to regulate the operation, management, and control of solid waste under its jurisdiction.

The amendment is also proposed under the commission's authority to control the management of municipal solid waste under Texas Health and Safety Code, §361.011, and to implement §361.0861 and §361.111, Texas Health and Safety Code, Chapter 361, Solid Waste Disposal Act.

SUBCHAPTER A : GENERAL INFORMATION

§330.4

§330.4. Permit Required.

(a) - (c) (No change.)

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

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

(4) a transfer station located within the permitted boundaries of a municipal solid waste Type I, Type II, Type III, or Type IV facility as specified in §330.41 of this title (relating to Types of Municipal Solid Waste Facilities) [landfill facility].

(e) - (p) (No change.)

(q) In addition to permit exemptions established in subsection (d) of this section, a permit is not required for any new municipal solid waste Type V transfer station that includes a material recovery operation that meets all of the requirements established by this subsection. Owners and operators of Type V transfer facilities meeting the requirements of this subsection are allowed to

register their operations in lieu of permitting them. Owners and operators of transfer stations that meet the permit exemption requirements and wish to exercise the exemption option must register their operation in accordance with §330.65 of this title (relating to Registration for Solid Waste Management Facilities) [, meet the additional design criteria of §330.65(f) and operate the facility in accordance with Subchapter G of this chapter (relating to Operational Standards for Solid Waste Processing and Experimental Sites)].

(1) - (4) (No change.)

[(5) Executive director's notice of nuisance. If registered transfer facilities are operated in a manner which causes or results in a nuisance, as defined in §330.2 of this title (relating to Definitions), and the executive director gives written notice that a nuisance exists, the registered facility shall cease operations and the facility's registration shall be suspended until such time as the facility owner or operator receives written notice of the executive director's determination that the nuisance no longer exists.]

[(6) Receipt of registration. As a condition of receipt of a registration by a transfer facility under this subsection, the owner and operator of that facility agrees that if the facility operates in a manner which causes or results in a nuisance as defined in §330.2, and the executive director sends written notice pursuant to paragraph (5) of this subsection, the facility will immediately cease operations until the executive director notifies the facility of its determination that a nuisance no longer exists at the facility and that the facility may be reopened for operation.]

[(7) Request for commission decision. If a registered transfer facility is notified that nuisance conditions exist due to the operations of the facility, and that its registration is therefore suspended, the owner or operator of the registered facility may request that the question of whether or not a nuisance exists be decided by the Commission. This request must be in writing and filed within 20 calendar days of receipt of the executive director's written notice of suspension of the registration.]

(r) - (w) (No change.)

SUBCHAPTER E : PERMIT PROCEDURES

§330.65

STATUTORY AUTHORITY

The amended section is proposed under the authority of the Texas Water Code, §5.103 and §5.105, which provide the Texas Natural Resource Conservation Commission (commission) with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and pursuant to the Texas Solid Waste Disposal Act, Texas Health and Safety Code, §361.024, which provides the commission with the authority to regulate municipal solid waste and adopt rules as necessary to regulate the operation, management, and control of solid waste under its jurisdiction.

The amendment is also proposed under the commission's authority to control the management of municipal solid waste under Texas Health and Safety Code, §361.011, and to implement §361.111 and §361.0861.

§330.65. Registration for Solid Waste Management Facilities.

(a) Applicability. This section applies [shall apply] to a municipal solid waste management facility that [which] is exempt from permit requirements under §330.4(d), (g), and (q) of this title (relating to Permit Required).

(b) Construction and operation.

(1) The construction of the transfer facility shall not begin until the registration has been issued by the executive director. Operation of the facility shall not begin until the registration has been issued and a pre-opening inspection is conducted by commission staff.

(2) If a registered facility does not begin construction within two years of issuance of a registration or within two years of the conclusion of the appeals process whichever is longer , the registration shall automatically terminate and will no longer be effective under §330.4(d)(4). If a facility registered under previous rule does not begin construction within two years of the effective date of this section, or within two years of the conclusion of the appeals process whichever is longer, the registration shall automatically terminate and will no longer be effective.

(3) If a transfer station registration application was filed under a previous rule but the registration has not been issued, the applicant shall complete all registration requirements within one year of the effective date of this section or the application will be automatically withdrawn. If a registration application is filed under this section, the applicant shall complete all registration requirements within one year of the date of receipt by the commission or the application will be automatically withdrawn.

(4) Owners/operators must comply with all applicable regulations, and shall remain responsible for making corrections and/or other changes that are necessary to meet the requirements.

prior to beginning operation of the facility. [Owners/operators may proceed with construction of a solid waste management facility meeting all the requirements of this section without prior executive director approval, provided that a public meeting is held pursuant to subsection (d)(3)(C) of this section and the applicant has submitted an application complete with all information demonstrating compliance with these rules to the executive director. The operation of the facility shall not begin until after a pre-opening inspection has been conducted and authorization to accept waste has been given by the executive director. Owners/operators must comply with all applicable regulations, and shall remain responsible for making corrections and/or other changes that are necessary to meet the requirements, prior to beginning operation of the facility.]

(c) (No change.)

(d) Application. The complete registration application shall include Part I of a permit application as required by §330.52 of this title (relating to Technical Requirements of Part I of the Application), including but not limited to, documentation of population or incoming waste rate, site plan, land use narrative, site operating plan, legal description, evidence of competency, evidence of financial assurance, and an applicant's statement, and shall be submitted as follows:

(1) (No change.)

(2) Site plan. The site plan shall include all the general design criteria which could be incorporated in a set of construction plans and specifications. A site layout plan, signed and sealed by a registered professional engineer, and a location map shall be included in the plan.

(A) The site plan or location map, or both, shall identify:

(i) The site boundary,

(ii) Access to public roadway,

(iii) Site access control features,

(iv) Site drainage features, and

(v) Pertinent design information as determined by the
executive director.

(B) Site drawings shall include a north arrow, legend, and scale. All design
features shall be labeled.

(C) The site plan may be supplemented with additional sheets as needed to
depict all design features.

(3) Land use narrative.

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

(C) The applicant and the commission shall conduct a public meeting in the local area, prior to [the beginning of construction of the] facility authorization, to describe the proposed action to the general public. Notice of the public meeting shall be as specified in §39.101(d) of this title (relating to Notice of Public Meeting). [The public meeting shall be held as prescribed in the Health and Safety Code, §361.0791 (relating to Public Meeting and Notice Requirement) and §305.107 of this title (relating to Public Meeting and Notice Requirements).]

(D) Landowners list and land ownership maps. The applicant shall provide a list of landowners owning land within 500 feet of the site which includes their addresses along with a map locating the property owned by those persons. This map and list shall identify property owned by adjacent landowners and show all property ownership within 500 feet of the site.

(4) - (6) (No change.)

(7) Evidence of financial assurance. Evidence of financial assurance shall be provided for all facilities registered under this section and those facilities shall comply with provisions of Subchapter K, [in accordance with §330.9 and] §§330.280-330.286 of this Chapter (relating to Financial Assurance).

(8) Statement of applicant. The applicant shall provide documentation that the person signing the application meets the requirements of §305.44 of this title (relating to Signatories to Applications). The following document shall be signed, notarized, and submitted with the application:
[.] Figure 1 30 TAC §330.65(d)(8)

[(C) The applicant shall provide documentation that the person signing the application meets the requirements of §305.44 of this title (relating to Signatories to Applications).]

(e) Design criteria.

(1) - (4) (No change.)

(5) Air pollution and ventilation. Ventilation of structures designed in accordance with applicable codes shall be provided. The facility shall be designed and operated to prevent nuisance odors from leaving the property boundary of the facility. [The applicant shall consult with the Texas Air Control Board for assistance and any permit requirements.]

(A) Openings to process buildings shall be controlled to prevent releases of nuisance odors to the atmosphere.

(B) All odor control equipment shall be properly maintained and operated during the process operation.

(C) The applicant shall employ one or more of the following measures:

(i) air scrubber units for odor control;

(ii) on-site buffer zones for odor control;

(iii) additional waste handling procedures, storage procedures, and
clean-up procedures for odor control when accepting putrescible waste, or

(iv) Other ventilation and odor control measures approved by the
executive director.

(6) - (9) (No change.)

(10) Site facilities. The site shall provide facilities for potable water, sanitary purposes, office, maintenance, [recyclable materials collection,] and solid waste transfer. Concrete pads with raised curbs around the perimeter or asphalt paved areas with berms shall be utilized to control spills and contaminated water.

(11) (No change.)

(f) Additional design criteria. [This subsection applies only to transfer stations that recover 10% or more material from the incoming nonsegregated waste which are exempted from a permit under §330.4(q).]

(1) Process area. The process area for transfer stations that recover material from solid waste that contains putrescibles shall be maintained totally within an enclosed building.

[(2) Additional ventilation and odor control. The facility shall be designed to prevent nuisance odors from leaving the property boundary of the facility. If during the operation of the facility, nuisance odors are found to be passing the facility boundary, the facility owner or operator may be required to suspend operations until the nuisance is abated pursuant to §330.4(q)(5)-(7), and the registrant shall take all necessary measures to eliminate nuisance odors. The applicant shall consider:]

[(A) air scrubber units for odor control;]

[(B) additional on-site buffer zones for odor control; or]

[(C) additional waste handling procedures, storage procedures, and clean-up procedures for odor control when accepting putrescible waste for material recovery. All odor control and air pollution abatement devices constructed pursuant to this registration must obtain authorization, pursuant to Chapter 116 of this title (relating to Control of Air Pollution by Permits for New

Construction or Modifications), from the Office of Air Quality prior to start of construction. Openings to process buildings shall be controlled to prevent releases of nuisance odors to the atmosphere. All odor control equipment shall be properly maintained and operated during the process operation.]

(2) [(3)] Operational design standards. In designing the transfer facility the applicant shall ensure that all requirements of operation required by Subchapter G of this chapter (relating to Operational Standards for Solid Waste Processing and Experimental Sites) will be met. Operational design standards shall be included in the site operating plan.

(3) [(4)] Safety plan. The applicant shall provide a written safety plan for site workers that operate material recovery equipment or that will hand sort recoverable material from the nonsegregated incoming waste.

(g) Motion for Reconsideration. The applicant or a person affected may file with the chief clerk a motion for reconsideration of the executive director's final approval of an application, under §50.39(b)-(f) of this title (relating to Motion for Reconsideration), of the executive director's final approval of an application. The criteria regarding motions for reconsideration shall be explained in public notices given under Chapter 39 of this title (relating to Public Notice) and §50.33 of this title (relating to Executive Director Action on Application). Notice of issuance of registration shall be mailed to landowners as shown on the land ownership map and landowners list required by §330.65(d)(3)(D) of this title (relating to Application), and to any other person requesting notice.

Figure 1: 30 TAC 330.65(d)(8)

[(A)] I, _____, state that I have knowledge of the facts set forth herein and that these facts are true and correct, to the best of my knowledge and belief. I further state that, to my knowledge and belief, the project for which application is now being made will not in any way violate any law, rule, ordinance, or decree of the duly authorized governmental entity having jurisdiction. I further state that I am the applicant or am authorized to act for the city/county/applicant.

(Signature)

(Type Name and Title)

(Date)

[(B) Notary public's certificate:]

Subscribed and sworn to before me, by the said _____, this _____ day of _____ 19__, to certify which witness my hand and seal of office.

Notary Public in and for _____

County, Texas.

My commission expires on _____.