

The Texas Natural Resource Conservation Commission (TNRCC, commission or agency) adopts new §§328.120-328.123, concerning symbols for certain plastic containers. New §§328.120-328.123 are adopted without changes to the proposed text as published in the October 29, 1999 issue of the *Texas Register* (24 TexReg 9587) and will not be republished.

#### EXPLANATION OF ADOPTED RULES

Passed by the Texas Legislature in 1989, Texas Health and Safety Code, §369.002(a)-(d) adopts a labeling system for plastic bottles and rigid plastic containers recommended by the Society of the Plastics Industry. This system is the traditional triangular symbol with the numbers inside the triangle to identify the type of resin.

Section 369.002(e) was added by the Legislature in 1993 and states “The commission may approve the use of another nationally or internationally recognized label coding system for special-purpose plastic bottles or rigid plastic containers which are components of motor vehicles in place of the symbols described by subsections (c) and (d).” By letter dated December 10, 1997, the Society of Automotive Engineers, Inc. (SAE) asked the commission to approve the use of SAE Recommended Practice J1344, *Marking of Plastic Parts*. Approval would allow the vehicle-manufacturing industry to label plastic containers according to the SAE’s recommended system for purposes of recycling instead of the labeling system specified in Texas Health and Safety Code, §369.002 (a)-(d). The vehicle dismantling and recycling industry would conceivably recover more plastics from vehicles by being able to identify the various plastic resins more easily. This proposal contains amendments that would allow this option.

#### FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the adopted 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 Texas Government Code. The adopted rulemaking will allow the vehicle-manufacturing industry to label plastic containers according to the SAE recommended system, which is currently standard practice. This adopted rulemaking does not meet the definition of a major environmental rule because it will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. The use of SAE’s coding system could lead to more recovery of plastics from vehicles, and therefore these rules could result in a cost savings to the industry. Furthermore, this rulemaking will not adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. In addition, the adopted rulemaking does not meet any of the four applicability requirements of a “major environmental rule which trigger an analysis under §2001.0225(b).” This rulemaking does not involve an agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program, nor was it developed solely under the general powers of the agency.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to recognize in commission rules as standard industry practice of the

vehicle-manufacturing industry, to code plastic containers according to the SAE recommended system. This action will not make existing rules less stringent. The use of SAE's coding system could lead to more recovery of plastics from vehicles because it provides a more detailed system of categorization. Promulgation and enforcement of these rules will not burden private real property because private real property is not the subject of these rules. Therefore, this proposal will not constitute a taking under Texas Government Code, Chapter 2007.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking and found that these rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will it affect any action/authorization identified in Coastal coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

#### PUBLIC HEARING AND COMMENTERS

The Chapter 328 Subchapter H symbols-for-certain-plastic-containers rules were published in the October 29, 1999 *Texas Register* (24TexReg9587). A public hearing was not held on this rulemaking. The comment period on these rules ended on November 29, 1999. No comments were received on the proposed rule.

#### STATUTORY AUTHORITY

The new sections are adopted under 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 Texas Water Code and other laws of this state, and pursuant to 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. Additionally, Texas Health and Safety Code, §361.422 provides the commission with the authority to adopt rules regarding recycling goals, and Texas Health and Safety Code, §369.002 provides the commission with the authority to establish a labeling system for certain plastic containers.

## **SUBCHAPTER H: SYMBOLS FOR CERTAIN PLASTIC CONTAINERS**

### **§§328.120-328.123**

#### **§328.120. Purpose.**

The purpose of this subchapter is to establish procedures and requirements for the labeling of certain plastic containers.

#### **§328.121. Applicability.**

The sections in this subchapter are applicable to persons who are involved in the manufacturing or distribution of a plastic bottle or rigid plastic container regulated by the commission pursuant to the Texas Health and Safety Code, §§369.001 - 369.002.

#### **§328.122. Definitions of Terms.**

The following words and terms, when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Plastic** - A material made of polymeric organic compounds and additives that can be shaped by flow.

(2) **Plastic bottle** - A plastic container that:

(A) has a neck smaller than the body of the container;

(B) is designed for a screw top, snap cap, or other closure; and

(C) has a capacity of not less than 16 fluid ounces or more than five gallons.

(3) **Rigid plastic container** - A formed or molded container, other than a plastic bottle, that:

(A) is intended for single use;

(B) is composed predominantly of plastic resin;

(C) has a relatively inflexible finite shape or form; and

(D) has a capacity of not less than eight ounces or more than five gallons.

**§328.123. Symbols for Certain Plastic Containers.**

(a) A person may not manufacture or distribute a plastic bottle or rigid plastic container unless the appropriate symbol indicating the plastic resin used to produce the bottle or container is molded into or imprinted on the bottom or near the bottom of the bottle or container.

(b) A plastic bottle or rigid plastic container with a base cup or other component of a material different from the basic material used in making the bottle or container shall bear the symbol indicating its basic material.

(c) The symbols used under this section must consist of a number placed within a triangle of arrows and of letters placed below the triangle of arrows. The triangle must be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The arrowhead of each arrow must be at the midpoint of each side of the triangle with a short gap separating the arrowhead from the base of the adjacent arrow. The triangle formed by the arrows must depict a clockwise path around the number.

(d) The numbers, letters of the symbols, and the plastic resins represented by the symbols are:

(1) 1 and PETE, representing polyethylene terephthalate;

(2) 2 and HDPE, representing high density polyethylene;

(3) 3 and V, representing vinyl;

(4) 4 and LDPE, representing low density polyethylene;

(5) 5 and PP, representing polypropylene;

(6) 6 and PS, representing polystyrene; and

(7) 7 and OTHER, representing all other resins, including layered plastics of a combination of materials.

(e) The commission approves the use of Society of Automotive Engineers, Inc. (SAE) J1344 *Marking of Plastic Parts*, an internationally recognized label coding system published by the SAE.

This optional label coding system is approved for use with special-purpose plastic bottles or rigid plastic containers that are components of motor vehicles in place of the symbols described by subsections (c) and (d) of this section.

(f) The commission shall:

- (1) maintain a list of the symbols; and
  
- (2) provide a copy of that list to any person on request.