

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §§330.381, 330.401, 330.407, 330.408, 330.416, 330.601, 330.890-330.891, 330.893-330.895, and 330.897; the repeal of §§330.382-391, 330.621-330.623, 330.631-330.633, 330.701-330.706, 330.721, 330.731-330.733, 330.735, 330.801-330.821, 330.970-330.976, 330.980-330.989, 330.1051-330.1054, 330.1101-330.1109, 330.1180-330.1189, and 330.1200-330.1205; and new §§330.382-330.389, concerning municipal solid waste (MSW).

This action constitutes the commission's proposal to review the rules contained in 30 TAC Chapter 330, Subchapters M through Z, in accordance with Article IX, § 167, General Appropriations Act, 75th Legislature, 1997.

#### REVIEW OF AGENCY RULES

The commission proposes to review the rules contained in 30 TAC Chapter 330, Subchapters M, N, O, P, Q, R, S, T, U, V, Y, and Z, concerning Municipal Solid Waste, as mandated by the General Appropriations Act, Article IX, Section 167. The commission does not currently have a Subchapter W or X in Chapter 330. Subchapters A through L are not included in this review of agency rules, but will be reviewed at a later date. The General Appropriations Act, Section 167, requires state agencies to review and consider for readoption rules adopted under the Administrative Procedure Act. The reviews must include, at a minimum, an assessment that the reason for the rules continues to exist. The commission has reviewed the rules in the above stated subchapters in Chapter 330 and determined that the rules in Chapter 330 Subchapters M through Z are still necessary in that they implement critical provisions of the Texas Health and Safety Code, Chapter 361, Solid Waste Disposal Act, and Chapter

371, Used Oil Collection, Management and Recycling. These subchapters in Chapter 330 provide necessary rules to carry out the statutory mandates to regulate solid waste.

#### EXPLANATION OF PROPOSED RULES

Changes have been made throughout Subchapters M, N, O, P, Q, R, S, T, U, V, Y, and Z of the rules as the result of ongoing efforts by the commission for regulatory reform. The commission does not currently have a Subchapter W or X. These changes are for purposes of simplification and clarification only and do not involve substantive changes in the requirements of this chapter. In general, these changes involve editorial changes, reorganizing requirements into a more logical sequence, and correcting cross references. Specific changes to each subchapter are discussed in the following paragraphs. Subchapters A through L are not included in this proposal. These remaining Subchapters A through L will be reviewed at a later date for purposes of regulatory reform and rules review.

The following paragraphs describe the proposed amendments to Chapter 330 by subchapter.

#### SUBCHAPTER M: SOLID WASTE TECHNICIAN TRAINING AND CERTIFICATION PROGRAM.

The commission proposes to amend §330.381(b), concerning Purpose and Applicability, to correct the reference from Texas Department of Health to Texas Natural Resource Conservation Commission. Existing §330.382, concerning General, and §330.383, concerning Classification of Municipal Solid Waste Sites, will be repealed because they contain redundant information available in the Texas Health and Safety Code, Chapter 361, Solid Waste Disposal Act, and in this Chapter.

Existing §330.384, concerning Definitions, will be renumbered as §330.382. The definition of Approved Technical Institute will be amended to correct a reference from Texas Department of Health to Texas Natural Resource Conservation Commission. The definitions of Engineering Extension Service; Processing; and Sanitary Landfill will be amended to correct typographical errors. The definition of Board of Health will be deleted. The definition of commission referring to Texas Natural Resource Conservation Commission will be added and the definition of Commissioner referring to the Commissioner of Health will be deleted. The definition of Department referring to Texas Department of Health will be deleted. The definitions of Disposal, Hazardous Waste, and Municipal Solid Waste will be deleted because they are redundant and are found in existing §330.2, concerning Definitions. The definitions of Site Operator, Solid Waste, Solid Waste Facility, Solid Waste Technician, and Storage will be deleted because they are redundant and are found in existing §330.2, concerning Definitions, or they are found in the Texas Health and Safety Code, Solid Waste Disposal Act, Chapter 361.

Existing §330.385, concerning Administration, will be renumbered as §330.383. Existing §330.385(a)(1) will be modified to reflect the change from Texas Department of Health to Texas Natural Resource Conservation Commission. Existing §§330.385(a)(4)(C) and (D) will be amended to correct a reference from Texas Department of Health to Texas Natural Resource Conservation Commission. Existing §§330.385(b)(1) - (3) will reflect the change of jurisdiction of the Municipal Solid Waste Program from Texas Department of Health to Texas Natural Resource Conservation Commission. Existing §330.385(d) language containing obsolete dates will be deleted.

Existing §330.386, concerning Application for Letter of Competency, will have amendments and will be renumbered §330.384. Existing §330.386(a) will be amended to correct a reference from Texas Department of Health to Texas Natural Resource Conservation Commission.

Existing §330.387, concerning Qualification, will have several amendments and will be renumbered §330.385. Sections 330.387(a), (b), (c), and (d) will be amended to correct several references from Texas Department of Health to Texas Natural Resource Conservation Commission.

Existing §330.388, concerning Renewal, will correct a reference from Texas Department of Health to Texas Natural Resource Conservation Commission and will be renumbered §330.386.

Existing §330.389, concerning Revocation, will be amended to reflect the change of jurisdiction of the Municipal Solid Waste Program from Texas Department of Health to Texas Natural Resource Conservation Commission and will be renumbered as §330.387. This change will replace a reference to the Texas Department of Health “commissioner” with a reference to the TNRCC “executive director.”

Existing §330.390, concerning Recommendations for Solid Waste Facility Owners/Operators, will be renumbered as §330.388. Existing §330.390(a) will be deleted because it is obsolete language from a statute that has been revised. Existing §330.390(b) will replace a reference to the “Texas Board of Health” with “commission” to reflect the change of jurisdiction of the Municipal Solid Waste Program from Texas Department of Health to Texas Natural Resource Conservation Commission. Existing

§330.390(c) will correct a reference from Texas Department of Health to Texas Natural Resource Conservation Commission.

Existing §330.391, concerning Fees, will be renumbered §330.389.

#### SUBCHAPTER N: LANDFILL MINING

The commission proposes to amend §330.401, concerning Definitions, to make the definition of Recyclable Material consistent with the definition of Recyclable Material found in Chapter 332, concerning Composting. Also §330.401, concerning Definitions, will be amended to correct a reference made in the definition of Recycling.

Section 330.407, concerning Registration Application Processing, will remove redundant language relating to public meeting requirements and to provide a reference to the subchapter where public notice and public meeting requirements are specified (§39.101(d)). The language to be removed is duplicative of specific information contained in Chapter 39 of this title (relating to Public Notice), and the recommended replacement language is the same as that included in the new transfer station language in §330.65. Also language in §330.407 will be rewritten to be gender neutral.

Section 330.408(5), concerning Location Standards, will correct a reference regarding the Edwards Aquifer rules in Chapter 213 of this title.

Section 330.416(a), concerning Registration Application Preparation, will be amended to update a reference to the term Professional Engineer as contained in 22 TAC §131.166. Sections 330.416(m)(1)(D)(v)(V) and 330.416(m)(1)(F)(v) will be amended to correct two misspelled words.

#### SUBCHAPTER P: FEES AND REPORTING

The commission proposes an amendment to §330.601 in Subchapter P, concerning Fees and Reporting and the repeal of §§330.621-330.623 and §§330.631-330.633.

The proposed repeal of §§330.621, 330.622, and 330.623, concerning annual registration fees and annual reports for transporters of sludge, septic tank wastes, grease/grit trap wastes, and other similar wastes, is necessary because the regulation of municipal-type sludges and similar wastes is now under Chapter 312 of this title, concerning Sludge Use, Disposal and Transportation. Section 330.445(b), concerning recordkeeping by transporters of sludges, referenced in §330.622, and §330.448, concerning transporter fees, which are referenced in §§330.622 and 330.623 respectively, were previously repealed and the corresponding requirements incorporated in Chapter 312, concerning Sludge Use, Disposal, and Transportation.

The proposed repeal of §§330.631, 330.632, and 330.633, concerning annual registration fees and annual reports for transporters of used or scrap tires, is necessary because of the expiration of the waste tire recycling fund program under the Health and Safety Code, Chapter 361, Subchapter P, on December 31, 1997. Section 330.815(b), concerning recordkeeping by transporters of used or scrap

tires, referenced in §330.632, and §330.817, concerning transporter fees, which are referenced in §§330.632 and 330.633 respectively, were repealed by commission rule effective July 7, 1998.

The proposed amendment of §330.601, concerning purpose and applicability, is necessary to delete an obsolete reference containing 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. The language to be amended currently references §330.448, a previously repealed section. These sludges are now regulated under Chapter 312 of this title, concerning Sludge Use, Disposal and Transportation.

#### SUBCHAPTER Q: MEMORANDA OF AGREEMENT AND JOINT RULES WITH OTHER AGENCIES.

The commission proposes the repeal of §§330.701-330.706, 330.721, 330.731-330.733, 330.735, concerning Memoranda of Agreement and Joint Rules with Other Agencies. This will repeal the entirety of Subchapter Q. Three Memoranda of Understanding (MOU) in Subchapter Q will be moved to Chapter 7 of this title, concerning Memoranda of Understanding. Other portions of Subchapter Q will be repealed and will not be replaced because they are obsolete.

Sections 330.701 - 330.706 relate to certain responsibilities between the Texas Water Commission and Texas Air Control Board regarding municipal solid waste facilities and include the responsibility of each agency in the review of a MSW facility that burns or incinerates solid waste. These sections

became obsolete upon creation of the TNRCC (1993). These issues are now addressed internally through policy or rule.

The following sections will be repealed and will not be replaced: §330.701, concerning Definitions; §330.702, concerning Applicability; §330.703, concerning Permit Conditions; §330.704, concerning Representations in Applications for Permits; §330.705, concerning Responsibility for Review of Air Quality Impacts from Municipal Solid Waste Facility Units that Burn or Incinerate Solid Waste; and §330.706, concerning Air Emissions Requirements for Municipal Solid Waste Facility Units That Burn or Incinerate Solid Waste.

Section 330.721, concerning Adoption by Reference, is repealed and not replaced because it is duplicative of an updated MOU contained in Subchapter 7 of this title relating to Memoranda of Understanding. The MOU in §330.721 refers to an agreement between TDH, TWC, and the Railroad Commission regarding jurisdiction of each agency over wastes associated with oil and gas exploration, production, and refining, and wastes which result from geothermal resource development activities. The MOU in Chapter 7 was updated on May 31, 1998. This MOU is more appropriately placed in Chapter 7 for organizational purposes.

Section 330.731, concerning Adoption by Reference, is repealed and not replaced because it contains obsolete language. Section 330.731 refers to a Memorandum of Understanding (MOU) between the Texas Department of Health, Texas Water Commission, and Texas Air Control Board regarding

regulatory jurisdiction over activities relating to sludge generated by municipal wastewater treatment plants. The MOU became obsolete upon creation of the TNRCC.

Section 330.732, concerning Adoption by Reference, is repealed and will be moved to Chapter 7 of this title. The section refers to a MOU with the attorney general of Texas concerning intervention in the civil enforcement process. The MOU is more appropriately placed in Chapter 7 for organizational purposes.

Section 330.733, concerning Adoption of Memorandum of Understanding by Figure, is repealed and will be moved to Chapter 7 of this title. This section refers to a MOU between TDH and TNRCC regarding inspection of solid waste facilities that accept asbestos. The MOU is more appropriately placed in Chapter 7 for organizational purposes.

Section 330.735, concerning Adoption of Memorandum of Understanding between the Texas Natural Resource Conservation Commission and the Texas Department of Health Concerning Special Wastes from Health Care Related Facilities, is repealed and will be moved to Chapter 7 of this title. This section refers to a Memorandum of Understanding between the Texas Natural Resource Conservation Commission and the Texas Department of Health concerning special wastes from health care related facilities. The MOU is more appropriately placed in Chapter 7 for organizational purposes.

#### SUBCHAPTER R: MANAGEMENT OF USED OR SCRAP TIRES

The commission proposes to repeal Subchapter R, concerning Storage of Used or Scrap Tires or Tire Pieces, and proposes to move it to Chapter 328, concerning Waste Minimization and Recycling.

Existing Subchapter R pertains to recycling and reuse which is the subject of new Chapter 328 where other rules regarding waste minimization and recycling will be located.

#### SUBCHAPTER S: ASSISTANCE GRANTS AND CONTRACTS

Amendments are necessary to §§330.890, 330.891, 330.893 - 330.895, and 330.897 to reflect the transfer of regulatory responsibility from the Texas Department of Health or the Texas Water Commission to the Texas Natural Resource Conservation Commission, and to correct typographical errors. In addition to these editorial changes, other non-substantive changes are made to the sections listed below.

Section 330.890(c)(6) and (k), concerning General Program Information, is proposed to be amended to provide the current citation for Chapter 783 of the Government Code, the Uniform Grant and Contract Management Act of 1981. Subsection (k) is also proposed to be amended to indicate that copies of the rules promulgated under 1 TAC, Part 1, Chapter 5, Subchapter A, Division 4, concerning Uniform Grant and Contract Management Standards, may be obtained from the commission as provided in the rules.

**SUBCHAPTER U: GRANTS PERTAINING TO THE COLLECTION, REUSE, AND RECYCLING OF USED OIL**

The commission proposes to repeal Subchapter U and proposes to move it to Chapter 328, concerning Waste Minimization and Recycling. Subchapter U pertains to recycling and reuse which is the subject of new Chapter 328 where other rules regarding waste minimization and recycling will be located.

**SUBCHAPTER V: WASTE TIRE RECYCLING AND ENERGY RECOVERY GRANTS**

The commission proposes the repeal of §330.980, concerning Purpose and Scope; §330.981, concerning Applicability; §330.982, concerning Authority; §330.983, concerning Definitions of Terms and Abbreviations; §330.984, concerning Eligible Grant-Supported Activities; §330.985, concerning Eligible Applicants; §330.986, concerning Additional Recycling Facility Construction Grant Requirements; §330.987, concerning Additional Requirements for Waste Tire Energy Recovery Facility Grants for Tire Shred Users; §330.988, concerning Additional Requirements for Waste Tire Energy Recovery Facility Grants for Whole Tire Users; and §330.989, concerning Grant Announcement and Recipient Selection. This will repeal all sections in Subchapter V. These sections will be repealed and will not be replaced due to the sunset provisions of Texas Health and Safety Code Chapter 361, Subchapter P.

**SUBCHAPTER Z: WASTE MINIMIZATION AND RECYCLABLE MATERIALS**

The commission proposes the repeal of Subchapter Z and proposes to move it to Chapter 328, concerning Waste Minimization and Recycling where other rules regarding waste minimization and recycling will be located.

#### FISCAL NOTE

Bob Orozco, Financial Administration Division, has determined that for the first five-year period the sections are in effect, there will be no significant fiscal implications anticipated for state or local government as a result of enforcing or administering the sections.

#### PUBLIC BENEFIT

Mr. Orozco also has determined that for each year of the first five years the sections are in effect, the anticipated public benefit will be enhanced clarity in general commission processes and enhanced understanding by making the rules consistent with current procedures. These benefits are anticipated to assist the public and the regulated community in their understanding of the regulations and make certain regulatory requirements easier to find. There is no anticipated cost to persons who are required to comply with the amended sections as proposed.

#### SMALL BUSINESS ANALYSIS

The purpose of this action is to clarify the commission's procedural rules by correcting statutory references and making the rules more consistent with current commission practice. The proposed revisions do not impose additional requirements or new costs on small businesses who are required to comply with the proposed amendments. Small businesses should benefit from the enhanced clarity and organization of the rules.

#### DRAFT REGULATORY IMPACT ANALYSIS

The rulemaking is not subject to §2001.0225 of the Texas Government Code 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). Specifically, the proposal does not exceed a standard set by federal law. 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 that will be affected by these non-substantive changes. The proposed changes are not being made under the general powers of the commission, but are being made under the requirements of specific state law that allows the commission to provide these waste management programs, and under a requirement of the General Appropriations Act, Section 167, which requires state agencies to review and consider for reoption the rules adopted under the Administrative Procedure Act. The existing rules are still needed because they implement critical portions of the state law concerning solid waste management.

The economy, a sector of the economy, productivity, competition, or jobs, will not be adversely affected in a material way because no significant changes are being proposed regarding the procedures and criteria to be used by the commission and any regulated entities for regulated activities under this chapter. The proposed changes should benefit the economy, a sector of the economy, and productivity by clarifying existing requirements and making the rules easier to understand. As the existing rules are protective of human health and the environment, this proposal does not result in a decrease in the protection of the environment or human health.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule amendments and repeals is to repeal obsolete language; implement the commission's guidelines on regulatory reform as well as to provide clarifications to existing rule language; make the rule consistent with other commission rules; and, meet the statutory requirement for the commission to review its rules every four years as stated in the General Appropriations Act. Promulgation and enforcement of the rule amendments and repeal will not create a burden on private real property because no new requirements are being added.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this proposed rulemaking action is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resource Conservation Commission. 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, 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 reviewed this proposed rulemaking action for consistency, and has determined that this proposed rulemaking action is consistent with the applicable CMP goals and policies.

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 rule modifications will provide a clearer set of rules that currently 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 no new impact upon the coastal area. Interested persons may submit comments on the consistency of the proposed rules with the CMP goals and policies during the public comment period.

#### **PUBLIC HEARING.**

A public hearing on this proposal will be not be held unless one is requested.

#### 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 98056-330-WS. Comments must be received by 5:00 p.m., April 12, 1999. For further information, please contact Wayne Lee, of the Waste Policy and Regulations Division, at (512) 239-6815.

#### STATUTORY AUTHORITY

The repeals and amended sections are proposed under the authority of the Texas Water Code, §§5.103, 5.104 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, §§361.011 and 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, and pursuant to Texas Health and Safety Code, Chapter 371 related to Used Oil Collection, Management, and Recycling, §371.024(c) and (d).

The review of the commission's rules is proposed under Article IX, Section 167, General Appropriations Act, 75th Legislature, 1997.

The proposed new sections, amendments, and repeals implement the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361, §§361.011 and 361.024; Texas Health and Safety Code, Chapter 371, §371.024(c) and (d); and Texas Government Code, Chapter 783, §783.007.

**SUBCHAPTER M : SOLID WASTE TECHNICIAN TRAINING AND CERTIFICATION**

**PROGRAM**

**§§330.381-330.389**

**STATUTORY AUTHORITY**

The amended and new sections are 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 amended and new sections are also proposed under the commission's authority to control the management of municipal solid waste under Texas Health and Safety Code, §361.011, and §361.024, Chapter 361, Solid Waste Disposal Act.

The review of the commission's rules is proposed under Article IX, Rider 167, General Appropriations Act, 75th Legislature, 1997.

The proposed amendments implement Texas Health and Safety Code, §361.027, concerning Training of Solid Waste Technicians.

**§330.381. Purpose and Applicability.**

(a) The purpose of this rule is to establish a procedure and requirements for training and certification of solid waste technicians who are or who may become engaged in the management and/or operation of a municipal solid waste management facility and for training and certification of solid waste technicians who are or who may become engaged in the collection or transportation of municipal solid waste.

(b) This rule is applicable to persons who wish to be provided a Letter of Competency by the executive director [Texas Department of Health] that recognizes that the solid waste technician meets or exceeds the standards established in this section. [Additional training requirements for persons engaged in management of hazardous waste are established in §330.333(e) of this title (relating to General).]

**§330.382. Definitions.**

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

(1) **Approved technical institute** - An institution, either public or private, organized to provide technical training in solid waste management, offering courses of instruction which have been approved by the executive director for training credits and having, as a minimum, an instructor who:

(A) has at least two years full-time or an equivalent part-time experience as a professional instructor in this or a closely-related field plus three years solid waste experience; or

(B) has completed courses of instruction offered by the Engineering Extension Service's Vocational Industrial Teacher Education Division to include methods of teaching vocational industrial subjects, organization and use of instructional materials and human relations for vocational teachers plus three years solid waste experience; or

(C) can demonstrate qualification and instructor experience equivalent to the above plus three years solid waste experience.

(2) **Collection** - The act of removing solid waste (or materials which have been separated for the purpose of recycling) for transport elsewhere.

(3) **Collection system** - The total process of collecting and transporting solid waste. It includes storage containers; collection crews, vehicles, equipment, and management; and operating procedures. Systems are classified as municipal, contractor, or private.

(4) **Commission** - Texas Natural Resource Conservation Commission and its successors.

(5) **Committee** - Advisory Committee for the Solid Waste Technician Training and Certification Program.

(6) **Engineering Extension Service** - Texas Engineering Extension Service, Texas A&M University System.

(7) **Experience** - Actual experience gained from participating as a principal operator, foreman, supervisor, or manager of a solid waste facility appropriate to the respective class of Letter of Competency or other solid waste management experience approved by the executive director.

(8) **Letter of Competency** - The letter issued by the executive director stating that the solid waste technician has met or exceeded the requirements for training and certification for the specified classification of the program.

(9) **Management** - The systematic control of any or all of the following activities of generation, source separation, collection, handling, storage, transportation, processing, treatment, recovery, or disposal of solid waste.

(10) **Processing** - The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of hazardous waste, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover

energy or material from the waste, or so as to render such waste nonhazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(11) **Sanitary landfill** - A facility for the land disposal of solid waste which complies with all applicable standards and regulations so as to ensure that there is no reasonable probability of adverse effects on health or the environment from disposal of solid waste at such facility.

(12) **Solid waste technician** - An individual who is trained in the practical aspects of the design, operation, and maintenance of a solid waste facility in accordance with standards, rules, or orders established by the commission.

(13) **Storage** - The holding of solid waste for a temporary period, at the end of which the solid waste is processed, disposed of, or stored elsewhere.

(14) **Training credits** - Credits awarded for participating in training courses, conferences, meetings or seminars, correspondence courses, or other activities approved by the executive director.

**§330.383. Administration.**

(a) Committee.

(1) Membership and appointment. An 11-member advisory committee for the Solid Waste Technician Training and Certification Program will be appointed by the executive director.

Members will be selected as follows:

(A) one member recommended by each of the state organizations representing the Public Works Association, Governmental Refuse Collection and Disposal Association, and the National Solid Waste Management Association;

(B) one member from a state university or technical institute offering extension courses in solid waste management;

(C) one member representing a region of the commission;

(D) one member who is a council member, mayor, or city manager from a city that operates a solid waste facility and is recommended by the Texas Municipal League;

(E) one member who is a county judge or county commissioner from a county that operates a solid waste facility and is recommended by the Texas Association of Counties;

(F) two members from a public or private solid waste management organization who are principal operators or supervisors of active solid waste facilities or collection systems who meet the basic qualifications for certification at the Class A level;

(G) two members from the general public.

(H) where an organization or association fails to nominate a person, the executive director may appoint a person for that position.

(2) Term of office.

(A) Members will be selected to a three-year term, and no member shall serve more than two consecutive three-year terms.

(B) A person may serve on the committee only so long as he represents the association or category for which he was appointed.

(3) Organization.

(A) Annually, the committee will select from its members a chairman and such officers as may be needed to conduct business.

(B) A quorum of the committee will be a majority of its appointed members.

(4) Responsibilities. The committee will:

(A) assist and advise in promulgating rules of procedure or policies to develop and administer the training and certification program;

(B) identify and recommend legislation that is designed to increase the effectiveness of the program;

(C) assist the executive director in identifying training needs and make recommendations for developing training programs and testing protocol;

(D) assist the executive director in evaluating training and experience records of applicants to establish the level of classification for which the applicant is qualified; and

(E) promote the program and encourage owners/operators to employ technicians certified under the program.

(5) Reimbursements. Members of the committee may be reimbursed for travel, lodging, and meals when expenses are incurred in connection with the performance of duties of the committee. Reimbursement will be in accordance with established travel and per diem rates for state employees.

(b) Executive director.

(1) The commissioners may delegate those functions necessary to administer and operate the program to the executive director.

(2) The executive director will establish training and testing requirements to determine the qualifications of the solid waste technician. The executive director will consider the recommendations of the committee when establishing these qualifications.

(3) The executive director shall provide a member to the committee. Further, the executive director shall:

(A) provide administrative and secretarial services to the committee;

(B) provide meeting places for the committee;

(C) maintain records of transaction of the committee meetings;

(D) maintain records of correspondence;

(E) maintain records of solid waste technicians who apply for letters of competency or participate in the training program;

(F) obtain, assemble, and evaluate documents and information from applicants;

(G) prepare, administer, or arrange for the giving of tests or examinations to applicants;

(H) grade tests or examinations for determining the competency of solid waste technicians;

(I) issue the appropriate letter of competency to successful applicants;

(J) notify unsuccessful applicants of test results and or deficiencies in eligibility for certification; and

(K) notify persons possessing a letter of competency when that letter is up for renewal.

**§330.384. Application for Letter of Competency.**

(a) Solid waste technicians desiring a letter of competency from the executive director shall submit an application on a standard form, signed under oath, setting forth the applicant's qualification.

(b) Applications for renewal or for higher classification shall be submitted on a standard form, signed under oath, and shall include necessary documentation to establish the applicant's qualification.

- (c) The applicant shall include the payment of required fees.

**§330.385. Qualification.**

(a) Requirements for letter of competency. Except as provided in subsection (d) of this section, all individuals issued a letter of competency shall meet the following requirements based upon education, experience, and training credits earned (which includes an examination).

- (1) Class A letter of competency (solid waste facility operation):

- (A) high school graduate or equivalent, five years experience, and 120 hours of training credits;

- (B) eight years experience and 120 hours of training credits; or

- (C) college education obtained from an accredited institution may be substituted for experience on the basis of one year of education for one year of experience, up to a maximum of four years.

- (2) Class B letter of competency (solid waste facility operation).

(A) high school graduate or equivalent, four years experience, and 80 hours of training credit;

(B) six years experience and 80 hours of training credit; or

(C) college education obtained from an accredited institution may be substituted for experience on the basis of one year of education for one year of experience, up to a maximum of three years.

(3) Class C letter of competency (solid waste facility operation):

(A) high school graduate or equivalent, two years experience, and 40 hours of training credit;

(B) four years experience and 40 hours of training credit; or

(C) college education obtained from an accredited institution may be substituted for experience on the basis of one year of education for one year of experience, up to a maximum of one year.

(4) Class D letter of competency (collection system):

(A) high school graduate or equivalent, two years experience, and 40 hours of training credit;

(B) four years experience and 40 hours of training credit; or

(C) college education obtained from an accredited institution may be substituted for experience on the basis of one year of education for one year of experience, up to a maximum of one year.

(5) Provisional letter. A provisional letter may be issued upon either of the conditions outlined in subparagraphs (A) and (B) of this paragraph. A provisional letter is not renewable and an applicant must agree to complete any lacking requirements for the standard letter within the time specified by the executive director and before the expiration of the provisional letter. A provisional letter shall require the same application fee and shall be issued for the same term as the corresponding letter of competency.

(A) Persons may be awarded a provisional letter in each class upon completing the required training credits (which includes passing an examination), completing six months in a position of responsibility that equates to the class of letter applied for, and possessing the minimum education requirements for that class, but lacking the required experience.

(B) Persons may be awarded a provisional letter in each class upon demonstrating that they meet the education and experience requirements of paragraphs (1)-(4) of this subsection, but lack the required training credits.

(6) Solid waste technician in training. An individual engaged in or who expects to be engaged in a solid waste management activity who does not meet the education, training, or experience requirements established for a letter of competency or provisional letter, may be issued a letter Solid Waste Technician in Training after performing duties similar to those performed by a solid waste technician for six months or after enrolling in a program of training to qualify for a letter of competency. The solid waste technician in training letter may be issued upon application and substantiation of these requirements. Such letter is nonrenewable and expires on the day before the anniversary of the date the letter was awarded.

(7) Waiver of training credit requirements. An applicant meeting the education and experience requirements of a letter may submit a written request to the executive director for a waiver of training credit requirements. The executive director may grant such a request if the applicant has passed the appropriate examination offered by the executive director.

(b) Training credits. Training credits, for purposes of this section, may be earned by successfully completing the course of instruction (which includes passing the required examinations) for each classification which has been approved by the executive director and given by the Engineering

Extension Service, accredited universities, approved technical institutes, or other formal programs approved by the executive director.

(1) Class A-Complete the training required for Class B and C and complete 40 hours of approved additional training credits (which includes an examination).

(2) Class B-Complete the training required for Class C and complete 40 hours of approved additional training credits.

(3) Class C-Complete 40 hours of approved training credits (which includes an examination).

(4) Class D-Complete 40 hours of approved training credits (which includes an examination).

(c) Examination.

(1) Written examination will be used in determining the knowledge, ability, and judgment of a candidate. Upon petition, the executive director may use an oral examination to establish a candidate's qualification for a Class C or D letter of competency.

(2) Examinations will normally be given by the executive director in conjunction with the training offered by the Engineering Extension Service, accredited universities, approved technical institutes, or other formal programs approved by the executive director. Examinations may be offered at other times as the need is determined by the executive director.

(3) Correctly answering 70% of the questions on an examination constitutes a passing grade.

(d) Term of the letter of competency. The letter of competency shall be issued for a term of four years and shall expire on the day before the anniversary of the date the letter was awarded.

**§330.386. Renewal.**

A letter of competency may be renewed, unless revoked for cause, by examination or by training credits. For renewal without examination, the applicant shall make application no later than 90 days prior to expiration of the current letter and shall provide evidence of training credits as follows. Renewal of letters of competency without examination requires that the applicant complete approved training courses offered by the Engineering Extension Service, accredited universities or approved technical institutes, or other formal programs approved by the executive director.

(1) Class A-40 hours.

(2) Class B-32 hours.

(3) Class C-24 hours.

(4) Class D-24 hours.

**§330.387. Revocation.**

The executive director may revoke a letter of competency if it is found that the person to whom the letter is issued has practiced fraud or deceit in making the application for a letter of competency or in performance of duties as a solid waste technician or that reasonable care of judgment was not used in performance of duties. The decision may be appealed in accordance with the Administrative Procedure and Act.

**§330.388. Recommendations for Solid Waste Facility Owners/Operators.**

(a) The commission further recommends that owners or operators of municipal solid waste facilities use the following guidelines to determine the appropriate class of letter needed for a facility or management activity.

(1) Class A letter of competency-Management and supervisory personnel of solid waste facilities and activities serving a population equivalent of 5,000 persons or more.

(2) Class B letter of competency-Personnel responsible for the site operations of solid waste facilities and activities serving a population equivalent of 5,000 persons or more.

(3) Class C letter of competency-Operators and/or supervisory personnel of solid waste facilities and activities serving a population equivalent of less than 5,000 persons; or persons other than management and supervisory personnel employed at any facility where it is desired that such persons hold a letter of competency.

(4) Class D letter of competency-Operators or supervisory personnel who are engaged exclusively in municipal solid waste collection activities.

(b) Owners/operators of Type I and Type IV landfills serving less than a population equivalent of 10,000 people may request a waiver of the requirements of subsection (a)(1) or (b)(2) of this section. The executive director may grant a waiver where the petitioner has established and provided adequate assurances that the site can be operated in accordance with the municipal solid waste rules and any special provisions of the permit.

**§330.389. Fees.**

(a) The following fees are established for initial application whether qualifying with or without examination.

(1) Class A-\$40.

(2) Class B-\$30.

(3) Class C-\$20.

(4) Class D-\$20.

(b) Fee for renewal shall be \$20 for each class.

(c) Letters for solid waste technician in training shall be issued without fee.

**SUBCHAPTER M : SOLID WASTE TECHNICIAN TRAINING AND  
CERTIFICATION PROGRAM**

**§§330.382, 330.383, 330.384, 330.385, 330.386, 330.387, 330.388, 330.389, 330.390, 330.391**

**STATUTORY AUTHORITY**

The repeals are 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 repeals are also proposed under the commission's authority to control the management of municipal solid waste under Texas Health and Safety Code, §361.011, and §361.024, Chapter 361, Solid Waste Disposal Act.

The review of the commission's rules is proposed under Article IX, Rider 167, General Appropriations Act, 75th Legislature, 1997.

The proposed repeals implement Texas Health and Safety Code, §361.027, concerning Training of Solid Waste Technicians.

**§330.382. General.**

**§330.383. Classification of Municipal Solid Waste Sites.**

**§330.384. Definitions.**

**§330.385. Administration.**

**§330.386. Application for Letter of Competency.**

**§330.387. Qualification.**

**§330.388. Renewal.**

**§330.389. Revocation.**

**§330.390. Recommendations for Solid Waste Facility Owners/Operators.**

**§330.391. Fees.**

**SUBCHAPTER N : LANDFILL MINING**

**§§330.401, 330.407, 330.408, 330.416**

**STATUTORY AUTHORITY**

The amended sections are 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 amendments are also proposed under the commission's authority to control the management of municipal solid waste under Texas Health and Safety Code, §361.011, and §361.024, Chapter 361, Solid Waste Disposal Act.

The review of the commission's rules is proposed under Article IX, Rider 167, General Appropriations Act, 75th Legislature, 1997.

The proposed amendments implement Texas Health and Safety Code, §361.092, concerning Registration for Extracting Materials from Certain Solid Waste Facilities.

**§330.401. Definitions.**

Unless otherwise noted, all terms contained in this section are defined by their plain meaning.

This section contains definitions that are applicable only to this subchapter and which supersede definitions in §330.2 of this title (relating to Definitions) where those terms appear in this subchapter.

As used in this subchapter, words in the singular include the plural and words in the plural include the singular. The following words and terms, when used in this subchapter, shall have the following meanings.

(1) **Closed municipal solid waste landfill (CMSWLF)** - A discrete area of land or an excavation that has received only municipal solid waste or municipal solid waste combined with other solid wastes, including but not limited to construction/demolition waste, commercial solid waste, nonhazardous sludge, conditionally exempt small-quantity generator hazardous waste, and industrial solid waste, and that is not a land application unit, surface impoundment, injection well, or waste pit as those terms are defined by 40 CFR §257.2.

(2) **Landfill mining** - The physical procedures associated with the excavation of buried municipal solid waste and processing of the material to recover material for beneficial use.

(3) **Nuisance** - Nuisances as set forth in the Texas Health and Safety Code, Chapter 341 and 382; the Texas Water Code, Chapter 26; and §101.4 of this title (relating to Nuisance), and any other applicable regulation or statute.

(4) **Permitted landfill** - Any type of municipal solid waste landfill that received a permit from the state of Texas to operate and has not completed post closure operations.

(5) **Recyclable material** - For purposes of this subchapter, a recyclable material is a material that has been recovered or diverted from the solid waste stream for purposes of reuse, recycling, or reclamation, or a substantial portion of which is consistently used in the manufacture of products which may otherwise be produced from raw or virgin materials. Recyclable material is not solid waste unless the material is deemed to be hazardous solid waste by the administrator of the United States Environmental Protection Agency, whereupon it shall be regulated accordingly unless it is otherwise exempted in whole or in part from regulation under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Protection Act. Recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

(6) **Recycling** - A process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials in the production of new products. Recycling includes the composting process if the compost material is put to beneficial reuse as defined in §332.2 [§333.2] of this title (relating to Definitions) and as specified in §332.71 of this title (relating to Sampling and Analysis Requirements for Final Product).

**§330.407. Registration Application Processing.**

(a) An application shall be submitted to the executive director. When an application is administratively complete, the executive director shall assign the application an identification number.

(b) The applicant and the commission shall conduct a public meeting in the local area, when the application is administratively complete, to describe the proposed action to the general public. Notice of 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 § 305.107 of this title (relating to Public Meeting and Notice Requirements).]

[(c) The requirements for public notice are as follows:]

[(1) When an application is administratively complete the chief clerk shall mail notice to adjacent landowners. The chief clerk also shall mail notice to other affected landowners as directed by the executive director.]

[(2) When an application is technically complete the chief clerk shall mail notice to adjacent landowners. The chief clerk shall also mail notice to other affected landowners as directed by the executive director. The applicant shall publish notice in the county in which the facility is located, and in all adjacent counties. The published notice shall be published once a week for three consecutive weeks. The applicant should attempt to obtain publication in a Sunday edition of a newspaper. The mailed and published notices shall explain the method for submitting a motion for reconsideration.]

[(3) Notice issued under paragraphs (1) or (2) of this subsection shall contain the following information:]

[(A) the identifying number given the application by the executive director;]

[(B) the type of registration sought under the application;]

[(C) the name and address of the applicant(s);]

[(D) the date on which the application was submitted; and]

[(E) a brief summary of the information included in the application.]

(c) [(d)] The executive director or his designee shall, after review of any application for registration of a landfill mining facility, determine if the application will be approved or denied in whole or in part. The executive director shall base his decision on whether the application meets the requirements of this subchapter and the requirements of §330.403 of this title (relating to General Requirements).

(d) [(e)] At the same time that the executive director's final decision is mailed to the applicant, a copy or copies of this decision shall also be mailed to all adjacent landowners and to other affected landowners as directed by the executive director.

(e) [(f)] In regard to motions for reconsideration, notwithstanding §50.31(c)(8) of this title (relating to Purpose and Applicability), applications for registration under this subchapter are governed by §50.39(b)-(f) of this title (relating to Motion for Reconsideration). The applicant or a person affected may file with the chief clerk a motion for reconsideration under §50.39(b)-(f) of this title of the executive director's final decision.

**§330.408. Location Standards.**

Facilities shall meet all of the following location criteria.

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

(5) Edwards aquifer recharge zone. If located over the Recharge Zone of the Edwards Aquifer, a facility is subject to Chapter 213 [313] of this title (relating to Edwards Aquifer). The Edwards Aquifer Recharge Zone is specifically that area delineated on official maps of the office of the executive director.

(6) (No change.)

**§330.416. Registration Application Preparation.**

(a) General instruction and title page. To assist the executive director in evaluating the technical merits of a landfill mining facility, a site development plan shall be prepared and submitted to the commission along with a Registration Application Form. The site development plan shall be sealed by a registered professional engineer in accordance with the provisions of 22 TAC §131.166 [131.138]. All submittals shall be in a complete final form. The site development plan shall contain all of the information specified in this section. A title page shall show the name of the project, the county (and city if applicable) in which the proposed project is located, the name of the applicant, the name of the engineer, the date the application was prepared and the latest date the application was revised.

(b) - (l) (No change.)

(m) Site plans. To assist the executive director in evaluating the impact of the facility on the environment, public safety, and public health, the applicant shall provide the following.

(1) Surface water protection plan. The surface water protection plan shall be prepared by a registered professional engineer. At a minimum the applicant shall provide all of the following.

(A) - (C) (No change.)

(D) Drainage calculations as follows.

(i) - (iv) (No change.)

(v) Drainage Maps and Drainage Plans shall be provided as follows:

(I) - (IV) (No change.)

(V) a profile drawing. The drawing shall include profiles of all ditches and pipes. Profiles shall include top of bank, flowline, hydraulic grade flowrate, velocities, and existing groundline. Ditches and swales [swells] shall have a minimum of one foot of freeboard.

(VI) - (VII) (No change.)

(E) (No change.)

(F) In cases where a geologic/hydrogeologic report is determined to be needed by the executive director, the geologic/hydrogeologic report shall be prepared and signed by an engineer or qualified geologist/hydrogeologist. If determined to be needed by the executive director, the applicant shall include discussion and information on all of the following:

(i) - (iv) (No change.)

(v) a ground water investigation report. If required by the executive director, this report shall establish and present the ground water flow characteristics at the site which shall include ground water elevation, gradient and direction of flow. The flow characteristics and most

likely pathway(s) for pollutant migration shall be discussed in a narrative format and shown graphically on a piezometric contour map. The ground water data shall be collected from piezometers installed at the site. The minimum number of piezometers required for the site shall be three for sites of five acres or less, for sites greater than five acres the total number of piezometers required shall be three piezometers [piezometer] plus one piezometer for each additional five acres or fraction thereof unless otherwise approved by the executive director.

(G) - (K) (No change.)

(2) - (5) (No change.)

## **SUBCHAPTER P : FEES AND REPORTING**

### **§330.601**

#### **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 §361.024, Chapter 361, Solid Waste Disposal Act.

The review of the commission's rules is proposed under Article IX, Rider 167, General Appropriations Act, 75th Legislature, 1997.

The proposed amendment implements Texas Health and Safety Code, §361.013 concerning Solid Waste Disposal and Transportation Fees.

**§330.601. Purpose and Applicability.**

(a) Purpose.

(1) Fees. The commission is mandated by the Solid Waste Disposal Act, Texas 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).] 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.)

## **SUBCHAPTER P : FEES AND REPORTING**

### **§§330.621-330.623, 330.631-330.633**

#### **STATUTORY AUTHORITY**

The repeals are 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 repeals are also proposed under the commission's authority to control the management of municipal solid waste under Texas Health and Safety Code, §361.011, and §361.024, Chapter 361, Solid Waste Disposal Act.

The review of the commission's rules is proposed under Article IX, Rider 167, General Appropriations Act, 75th Legislature, 1997.

The proposed repeals implement Texas Health and Safety Code, §361.013 concerning Solid Waste Disposal and Transportation Fees.

**§330.621. Purpose and Applicability.**

**§330.622. Annual Reports.**

**§330.623. Annual Registration Fees.**

**§330.631. Purpose and Applicability.**

**§330.632. Annual Reports.**

**§330.633. Annual Registration Fees.**

**SUBCHAPTER Q : MEMORANDA OF UNDERSTAND AND JOINT RULES WITH OTHER  
AGENCIES**

**§§330.701-330.706, 330.721, 330.731-330.733, 330.735**

**STATUTORY AUTHORITY**

The repeals are proposed under the authority of the Texas Water Code, §§ 5.103, 5.104 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 repeals are also proposed under the commission's authority to control the management of municipal solid waste under Texas Health and Safety Code, §361.011, and §361.024, Chapter 361, Solid Waste Disposal Act.

The review of the commission's rules is proposed under Article IX, Rider 167, General Appropriations Act, 75th Legislature, 1997.

The proposed repeals implement Texas Health and Safety Code, §361.016, concerning Memorandum of Understanding by Commission.

**§330.701. Definitions.**

**§330.702. Applicability.**

**§330.703. Permit Conditions.**

**§330.704. Representations in Applications for Permits.**

**§330.705. Responsibility for Review of Air Quality Impacts from Municipal Solid Waste Facility  
Units That Burn or Incinerate Solid Wastes**

**§330.706. Air Emissions Requirements for Municipal Solid Waste Facility Units That Burn or  
Incinerate Solid Waste**

**§330.721. Adoption by Reference.**

**§330.731. Adoption by Reference.**

**§330.732. Adoption by Reference.**

**§330.733. Adoption of Memorandum of Understanding by Figure.**

**§330.735. Memorandum of Understanding between the Texas Natural Resource Conservation Commission and the Texas Department of Health concerning Special Wastes from Health Care Related Facilities.**

**SUBCHAPTER R : MANAGEMENT OF USED OR SCRAP TIRES**

**§§330.801-330.821**

**STATUTORY AUTHORITY**

The repealed sections are 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 repeals are also proposed under the commission's authority to control the management of municipal solid waste under Texas Health and Safety Code, §361.011, and §361.024, Chapter 361, Solid Waste Disposal Act.

The review of the commission's rules is proposed under Article IX, Rider 167, General Appropriations Act, 75th Legislature, 1997.

**§330.801. Purpose.**

**§330.802. Applicability.**

**§330.803. Definitions.**

**§330.804. General Requirements.**

**§330.805. Registration Requirements.**

**§330.806. Generator Requirements.**

**§330.807. Transporter Requirements.**

**§330.808. Manifest System.**

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

**§330.810. Scrap Tire Storage Site Registration.**

**§330.811. Design Requirements for Scrap Tire Storage Site.**

**§330.812. Scrap Tire Storage Site Record Keeping.**

**§330.813. Scrap Tire Facility Requirements.**

**§330.814. Requirements for a Scrap Tire Transportation Facility.**

**§330.815. Tire Monofill Permit Required.**

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

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

**§330.818. Priority Enforcement List (PEL) Program.**

**§330.819. Public Notice of Intent to Operate.**

**§330.820. Motion for Reconsideration.**

**§330.821. Closure Cost Estimate for Financial Assurance.**

**SUBCHAPTER S : ASSISTANCE GRANTS AND CONTRACTS**

**§§330.890-330.891, 330.893-330.895, 330.897**

The amended sections are 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 amendments are also proposed under the commission's authority to control the management of municipal solid waste under Texas Health and Safety Code, §361.011, and §361.024, Chapter 361, Solid Waste Disposal Act.

The review of the commission's rules is proposed under Article IX, Rider 167, General Appropriations Act, 75th Legislature, 1997.

The proposed amendments implement Texas Health and Safety Code, §361.014, concerning Use of Solid Waste Fee Revenue.

**§330.890. General Program Information.**

(a) Objective. The objectives of the financial assistance programs described in this subchapter are to promote good municipal solid waste management practices within the State of Texas. Through the procedures contained in this subchapter, the commission [Texas Water Commission (commission)] intends to provide funding for applied research, demonstration and pilot projects, feasibility studies, technical assistance, public education and awareness, information exchange, and local government programs designed to enhance solid waste management and litter abatement enforcement.

(b) (No change.)

(c) Definitions of terms and abbreviations. The following words, terms, and abbreviations, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commission--The Texas Natural Resource Conservation Commission

[Department--The Texas Department of Health.]

(2) - (5) (No change.)

(6) UGCMS--Uniform Grant and Contract Management Standards, consisting of a set of rules set forth in 1 TAC, Chapter 5, Subchapter A, promulgated pursuant to the Uniform Grant and

Contract Management Act of 1981, Chapter 783, Texas Government Code [Texas Civil Statutes, Article 4413(32g)].

(d) - (e) (No change.)

(f) Public notice. The commission's notice of funding availability for the grant programs identified in this subchapter, except as provided for under §330.895 of this title (relating to Information Exchange Program) shall be in the form of published requests for proposals (RFP) in the Texas Register. The commission [department] may also, at its discretion, advertise funding availability and specific RFPs by other means. The published RFPs will outline the work to be performed, establish appropriate deadlines, identify recipient qualifications, matching-fund requirements, and funding limitations. Submitted proposals shall be reviewed only if they satisfy the criteria as set forth in the appropriate RFP.

(g) Application forms and submittal procedures. Applications shall be submitted on forms provided by the commission. The necessary forms, as well as written instructions concerning their completion and submittal, may be obtained from the commission [Texas Water Commission, Capitol Station, Austin, Texas 78711]. All forms submitted for funding consideration, except as provided for under §330.895 of this title (relating to Information Exchange Program), must be in response to a commission-published [department published] RFP. Unless indicated otherwise on the forms or accompanying instruction sheets, applicants shall submit five copies of the appropriate application forms and all supplementary application materials.

(h) Preapplication conferences. Except in those cases where the published RFP does not specify or recommend participation in a preapplication conference, prospective applicants shall, prior to submitting the required application forms, contact the staff of the executive director [Bureau of Solid Waste Management] and either make arrangements to participate in a preapplication conference, or explain why it is impractical to attend such a conference. While participation in an RFP recommended preapplication conference is not mandatory, such participation is strongly recommended. Such conferences provide a means to:

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

(4) examine proposed activities to insure conformance with current commission [department] issued RFPs;

(5) - (7) (No change.)

(i) Review and selection procedures.

(1) Except as provided in paragraph (2) of this subsection, all applications for solid waste management assistance grants to be awarded under this subchapter shall be processed as follows.

(A) (No change.)

(B) Correspondence advising applicants of deficiencies in submitted applications may establish deadlines for the receipt of a complete and compliant application. Failure to comply with such deadlines may result in the executive director [department] rejecting the application.

(C) Once an application is determined to be complete and in compliance with all application submittal requirements, the applicant shall be notified in writing and advised concerning the time schedule the executive director [department] intends to follow in reaching a final decision regarding issuance or denial of an assistance grant.

(2) - (4) (No change.)

(j) Selection criteria. Criteria utilized in the selection process for solid waste management assistance grants may include, but are [is] not limited to, the:

(1) (No change.)

(2) degree to which the proposal is responsive to the purpose and funding criteria identified in the appropriate commission- [department] issued RFP;

(3) - (4) (No change.)

(5) quality of previous work submitted to the executive director [department] by the applicant, if any;

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

(k) UGCMS requirements. Applications must comply with all requirements set forth in the Uniform Grant and Contract Management Act of 1981, Chapter 783, Texas Government Code [Texas Civil Statutes, Article 4413(32g)], and the rules promulgated thereunder in 1 TAC, Chapter 5, Subchapter A. Copies of the Act and the rules may be obtained from the commission [Texas Water Commission, Capitol Station, Austin, Texas 78711].

(l) Contracts. Except for recipients of funds awarded under §330.895 of this title (relating to Information Exchange Program), all approved grantees will enter into a contract with the commission [department] prior to being allocated funds. Such contracts shall:

(1) - (5) (No change.)

(m) Solid waste disposal fees. To be eligible for any funding described in this subchapter, eligible recipients must not be delinquent in solid waste disposal fees owed the commission [department].

(n) (No change.)

(o) Grant programs suggestions. The commission encourages the public to submit for consideration ideas and suggestions for municipal solid waste topics that warrant funding under the grant programs identified in this subchapter. In addition to the assistance grants and contracts programs identified in this subchapter, the commission [department] may periodically make available for limited terms additional types or forms of assistance grants. Individuals or organizations with suggestions for grant topics and/or additional assistance grants and contracts programs are encouraged to identify them in writing to the commission [Texas Water Commission, Capitol Station, Austin, Texas 78711].

**§330.891. Applied Research Grant Program.**

(a) Program description. The goal of applied research grants awarded under this section is to provide financial assistance grants to encourage and stimulate research and study in the field of municipal solid waste management. The commission [Texas Water Commission] intends to encourage research as it recognizes the important position it holds in the creation and evolution of improved solid waste management technology.

(b) (No change.)

**§330.893. Feasibility Study Grant Program.**

(a) (No change.)

(b) Eligible projects. Potential study topics could be, but are not limited to, the review of various waste management options and their practicality with regard to:

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

(5) landfill\_ [--] gas recovery, treatment, and/or sale;

(6) landfill\_ [--] leachate recovery and treatment;

(7) - (8) (No change.)

(c) (No change.)

**§330.894. Technical Assistance Grant Program.**

(a) Program description. Technical assistance grants awarded under this section shall provide supplementary funding to aid recipients in achieving self-identified municipal solid waste management goals, which in the judgment of the commission [department] will serve to benefit public health; safeguard the environment; save or recover valuable resources; minimize solid waste generation; improve facility operating efficiency; or reduce nuisances. This assistance may be, but is not limited to, engineering, scientific, financial, or mechanical evaluations and analyses and/or the purchasing of materials and supplies that are necessary for the enhancement of a solid waste management program.

(b) - (c) (No change.)

**§330.895. Information Exchange Program.**

(a) Program description. The intent of the Information Exchange Program (program) is to facilitate the exchange of current municipal solid waste management information by providing supplementary travel expense monies. Eligible organizations shall determine their solid waste management needs and associated information requirements, and shall contact the executive director [department] for assistance regarding these information requirements. The executive director [department] shall determine if [departmental] staff or resources can provide the necessary assistance. If the assistance of another organization is determined to be appropriate, the executive director [department] may identify a willing advisor or facility with relevant, verifiable municipal solid waste experience. The matching of information recipients to information providers shall be done in a manner designed to maximize the amount and quality of information exchanged while minimizing the expense incurred by the state and the recipient organization. In cases where information providers are located within the state, travel to or from out-of-state locations will be approved only where such is shown to be the most cost-effective. The requesting organization, or potential recipient, may then submit a program application. It is anticipated that typically the recipient will send an individual or group of individuals to the advisor so that an actual operational technology or process may be reviewed. However, the commission [department] recognizes that, to maximize the information exchanged, the recipient may wish to have an advisor or advisors travel to the recipient's location or some other agreed-upon location. This may be appropriate; however, the recipient will be responsible for

reimbursing the information providers, in full, for the appropriate travel expenses. The recipient may, in turn, submit the appropriate reimbursed advisor(s) expenses along with their own expenses, for reimbursement by the commission [department].

(b) (No change.)

(c) Eligible projects. Eligible projects must use advisors with a relevant, established, verifiable municipal solid waste management process or program experience. Advisors may represent any political subdivision, educational organization, or private organization. Potential exchange topics can be, but are not limited to:

(1) - (7) (No change.)

(8) landfill\_ [--]leachate recovery and treatment;

(9) landfill\_ [--]gas recovery and treatment;

(10) - (12) (No change.)

(d) Funding limitations. Eligible travel expenses shall be those incurred while traveling within the United States. Travel expenses shall be limited to vehicle mileage, air or bus fare, food, and lodging. Recipient and/or information providers' salaries or fees are not eligible expenses. The

commission's Travel Allowance Guide will provide the guidelines for the determination of acceptable expenses. Expenses shall be eligible for repayment only if the travel was conducted after commission approval and shall be limited to trips of six nights or less in duration.

(1) (No change.)

(2) The maximum commission [departmental] contribution shall be \$500 per exchange.

(3) Requests requiring commission [departmental] contributions of less than \$100 shall not be accepted.

(e) (No change.)

(f) Final reporting procedures. Post-informational exchange reports shall be submitted to the commission [department] by both the recipient and the information provider. The recipient shall also complete and submit a commission-provided [department-provided] follow-up questionnaire form approximately 12 months after the informational exchange has occurred.

**§330.897. Supplemental Funding for the Enforcement of the Solid Waste Disposal Act and the Litter Abatement Act.**

(a) Program description. The purpose of the Supplemental Funding Program (program) is to provide supplementary grants to local governments for the enforcement and/or policing of the Solid Waste Disposal Act and the Litter Abatement Act. This program shall be managed so as to provide financial assistance and incentive to local governments to develop, expand, and/or improve an existing municipal solid waste and/or litter abatement enforcement program within their area of jurisdiction. Multifaceted programs that seek to combine preventive measures, public education/awareness, surveillance, and enforcement, including sentencing programs that result in environmental services being provided to the local community, are encouraged by the commission [department]. For funded programs, the commission [department] expects that the local authority will continue to sustain the program after supplementary funding ceases.

(b) - (c) (No change.)

**SUBCHAPTER U : GRANTS PERTAINING TO THE COLLECTION, REUSE, AND  
RECYCLING OF USED OIL**

**§§330.970-330.976**

**STATUTORY AUTHORITY**

The repealed sections are proposed under the Texas Water Code §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.011, which requires the commission to control the quality of water by rule. The repealed sections are also proposed under Texas Health and Safety Code Chapter 371.028, concerning Rules.

The repeals are also proposed under the commission's authority to control the management of municipal solid waste under Texas Health and Safety Code, §361.011, and §361.024, Chapter 361, Solid Waste Disposal Act.

The review of the commission's rules is proposed under Article IX, Rider 167, General Appropriations Act, 75th Legislature, 1997.

The repealed sections implement Texas Health and Safety Code, §371.028, concerning Rules.

**§330.970. Purpose and Scope.**

**§330.971. Applicability.**

**§330.972. Authority.**

**§330.973. Definitions of Terms and Abbreviations.**

**§330.974. Eligible Grant-Supported Activities.**

**§330.975. Eligible Applicants.**

**§330.976. Grant Announcement and Recipient Selection.**

## **SUBCHAPTER V : WASTE TIRE RECYCLING AND ENERGY RECOVERY GRANTS**

### **§§330.980-330.989**

#### **STATUTORY AUTHORITY**

The repealed sections are proposed under the Texas Water Code §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.011, which requires the commission to control the quality of water by rule. The repealed sections are also proposed under Texas Health and Safety Code, Chapter 361, §361.112, relating to Storage, Transportation, and Disposal of Used or Scrap Tires.

The repeals are also proposed under the commission's authority to control the management of municipal solid waste under Texas Health and Safety Code, §361.011, and §361.024, Chapter 361, Solid Waste Disposal Act.

The review of the commission's rules is proposed under Article IX, Rider 167, General Appropriations Act, 75th Legislature, 1997.

The repealed sections implement Texas Health and Safety Code, §361.112, relating to Storage, Transportation, and Disposal of Used or Scrap Tires.

**§330.980. Purpose and Scope.**

**§330.981. Applicability.**

**§330.982. Authority.**

**§330.983. Definitions of Terms and Abbreviations.**

**§330.984. Eligible Grant-Supported Activities.**

**§330.985. Eligible Applicants.**

**§330.986. Additional Recycling Facility Construction Grant Requirements.**

**§330.987. Additional Requirements for Waste Tire Energy Recovery Facility Grants for Tire  
Shred Users.**

**§330.988. Additional Requirements for Waste Tire Energy Recovery Facility Grants for Whole  
Tire Users.**

**§330.989. Grant Announcement and Recipient Selection.**

**SUBCHAPTER Z : WASTE MINIMIZATION AND RECYCLABLE MATERIALS**

**RECYCLING RATES AND REPORTING REQUIREMENTS**

**§§330.1051-330.1054, 330.1101-330.1109, 330.1180-330.1189, and 330.1200- 330.1205**

**STATUTORY AUTHORITY**

The repealed sections are proposed under the Texas Water Code §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.011, which requires the commission to control the quality of water by rule.

The repeals are also proposed under the commission's authority to control the management of municipal solid waste under Texas Health and Safety Code, §361.011, and §361.024, Chapter 361, Solid Waste Disposal Act.

The review of the commission's rules is proposed under Article IX, Rider 167, General Appropriations Act, 75th Legislature, 1997.

**§330.1051. Purpose and Scope.**

**§330.1052. Definitions of Terms and Abbreviations.**

**§330.1053. Recordkeeping and Reporting Requirement.**

**§330.1054. Recycling, Waste Stream Reduction, and Per Capita Waste Generation Rates.**

**§330.1101. Purpose.**

**§330.1102. Applicability.**

**§330.1103. Disposal of Batteries.**

**§330.1104. Retail Sale of Lead-acid Batteries.**

**§330.1105. Wholesale Sale of Lead-acid Batteries.**

**§330.1106. Notice Requirements.**

**§330.1107. Recordkeeping.**

**§330.1108. Inspection of Battery Retailers.**

**§330.1109. Penalties.**

**§330.1180. Applicability.**

**§330.1181. Definitions.**

**§330.1182. General Requirements.**

**§330.1183. Storage Facilities.**

**§330.1184. Transportation of Used Oil Filters.**

**§330.1185. Processors.**

**§330.1186. Public Used Oil Filter Collection Centers and Used Oil Filter Generators.**

**§330.1187. Shipping Documentation.**

**§330.1188. Penalties.**

**§330.1189. Generators Regulated by the Railroad Commission of Texas.**

**§330.1200. Purpose and Definitions.**

**§330.1201. General Guidelines and Requirements.**

**§330.1202. Requirements of Texas Water Commission.**

**§330.1203. Reports.**

**§330.1204. Joint Review.**

**§330.1205. Enforcement.**

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes new §§7.121- 7.123, concerning Memoranda of Understanding.

#### EXPLANATION OF PROPOSED RULES

Section 7.121 concerning Adoption by Reference is proposed. This section is an existing Memo of Understanding (MOU) and was formerly found in §330.732. The section refers to a MOU with the attorney general of Texas concerning intervention in the civil enforcement process. The MOU is more appropriately placed in Chapter 7 for organizational purposes. No changes have been made to the content of the MOU. The MOU is merely being moved from Chapter 330 to Chapter 7 for organizational purposes. Chapter 7 is the commission chapter that contains MOUs.

Section 7.122 concerning Adoption of Memorandum of Understanding by Figure is proposed. This section is an existing Memo of Understanding and was formerly found in §330.733. This section refers to a MOU between TDH and TNRCC regarding inspection of solid waste facilities that accept asbestos. The MOU is more appropriately placed in Chapter 7 for organizational purposes.

Section 7.123 concerning Memorandum of Understanding regarding Special Wastes from Health Care Related Facilities is proposed. This section is an existing Memo of Understanding and was formerly found in §330.735. This section refers to Memorandum of Understanding between the commission and the Texas Department of Health regarding the way special waste from health care related facilities is managed. The MOU is more appropriately placed in Chapter 7 for organizational purposes.

#### FISCAL NOTE

Bob Orozco, Financial Administration Division, has determined that for the first five-year period the sections are in effect, there will be no significant fiscal implications anticipated for state or local government as a result of enforcing or administering the sections.

#### PUBLIC BENEFIT

Mr. Orozco also has determined that for each year of the first five years the sections are in effect, the anticipated public benefit will be that the rules will conform to the commission's guidelines for regulatory reform. This will increase the readability of the rule, thus assisting the public and the regulated community in their understanding of the regulation. The additional changes are proposed to clarify existing rule language and make the rule consistent with current procedures and will benefit the public in that the rule will better reflect the TNRCC's current operating procedures.

The proposed revisions do not impose significant new requirements on the regulated community, small businesses, or persons who are required to comply with the sections as proposed.

#### DRAFT REGULATORY IMPACT ANALYSIS

This rulemaking is not subject to §2001.0225 of the Texas Government Code 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). Specifically, the proposal does not exceed a standard set by federal law. 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 that will be affected by these non-substantive changes. The proposed changes are not being made under the general powers of the commission, but are being made under the requirements of specific state law that allows the commission to provide these waste management programs, and under a requirement of the General Appropriations Act, Section 167, which requires state agencies to review and consider for reoption the rules adopted under the Administrative Procedure Act. The existing rules are still needed because they implement critical portions of the state law concerning solid waste management.

The economy, a sector of the economy, productivity, competition, or jobs, will not be adversely affected in a material way because no significant changes are being proposed regarding the procedures and criteria to be used by the commission and any regulated entities for regulated activities under this chapter. The proposed changes should benefit the economy, a sector of the economy, and productivity by clarifying existing requirements and making the rules easier to understand. As the existing rules are protective of human health and the environment, this proposal does not result in a decrease in the protection of the environment or human health.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule amendments and repeals is to move MOUs from Chapter 330 to Chapter 7 for organizational purposes. Chapter 7 is the commission chapter that contains MOUs. Promulgation and enforcement of the rule amendments and repeal will not create a burden on private real property.

## COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this proposed rulemaking action is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resource Conservation Commission. 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, 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 reviewed this proposed rulemaking action for consistency, and has determined that this proposed rulemaking action is consistent with the applicable CMP goals and policies.

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 merely provide a clearer set of rules that currently 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 no new impact upon the coastal area. Interested persons may submit comments on the consistency of the proposed rules with the CMP goals and policies during the public comment period.

#### PUBLIC HEARING.

A public hearing on this proposal will be not be held unless one is requested.

#### 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 98056-330-WS. Comments must be received by 5:00 p.m., April 12, 1999. For further information, please contact Wayne Lee, of the Waste Policy and Regulations Division, at (512) 239-6815.

#### STATUTORY AUTHORITY

The new sections are proposed under the authority of the Texas Water Code, §§5.103, 5.104, 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 new sections are also proposed under the commission's authority to control the management of municipal solid waste under Texas Health and Safety Code, §361.011, concerning Commission's Jurisdiction: Municipal Solid Waste and to implement §361.024, concerning Rules and Standards and §361.016, concerning Memorandum of Understanding by Commission, which provide the commission with the authority to adopt memorandum of understanding.

The review of the commission's rules is proposed under Article IX, Section 167, General Appropriations Act, 75th Legislature, 1997.

The proposed new sections and amendments implement Texas Health and Safety Code, §361.016, concerning Memorandum of Understanding by Commission.

#### **§7.121. Adoption by Reference.**

(a) The Texas Natural Resource Conservation Commission adopts by reference a memorandum of understanding among the Texas Water Commission and the Attorney General of Texas. The memorandum contains the Water Commission's and the Attorney General's interpretation concerning intervention in the civil enforcement process under the Texas Solid Waste Disposal Act.

(b) Copies of the memorandum of understanding are available upon request from the Waste Policy and Regulations Division, Texas Natural Resource Conservation Commission, P. O. Box 13087, Austin, Texas 78711-3087, (512) 239-6087.

(c) The effective date of the memorandum of understanding is October 9, 1993.

**§7.122. Adoption of Memorandum of Understanding by Figure.**

(a) The Texas Natural Resource Conservation Commission adopts a memorandum of understanding (MOU) between the Texas Department of Health (TDH) and the Texas Natural Resource Conservation Commission (TNRCC). The memorandum contains the agreement of the TNRCC to inspect asbestos disposal sites under its jurisdiction for conformance with 40 CFR Part 61, Subpart M, §61.154 and provide copies of inspection and enforcement documentation to the TDH. This effort will support the TDH in the regulation of emissions related to asbestos demolition and renovation activities per 40 CFR Part 61, Subpart M.

Figure: 30 TAC §7.122(a)

(b) Copies of the MOU are available upon request from the Waste Policy Division, Texas Natural Resource Conservation Commission, P. O. Box 13087, Austin, Texas 78711-3087, (512) 239-6087.

(c) The effective date of the MOU is the same as the effective date of the rule amendment adding this section.

**§7.123. Memorandum of Understanding between the Texas Natural Resource Conservation Commission and the Texas Department of Health concerning Special Wastes from Health Care Related Facilities.**

(a) Authority concerning special wastes from health care related facilities. Texas Natural Resource Conservation Commission and the Texas Department of Health, hereinafter "agencies," agree that pursuant to Texas Water Code, §5.012; Texas Health and Safety Code, Chapter 361; and Texas Health and Safety Code, §12.001, §12.032, §§81.081-81.092, §142.012, §241.026, §243.009, §244.009, §245.009, §245.010, §694.001, and §773.050, both agencies possess authority regarding special waste from health care related facilities. The agencies also agree that special expertise resides in each agency related to its area of authority and responsibility. The Texas Natural Resource Conservation Commission possesses authority over the treatment, handling, storage, processing and/or disposal of these wastes, including enforcement authority. The Texas Department of Health possesses authority over the approval of methods for the treatment of special waste from health care related

facilities, identifying entities that are subject to its approval provisions and the orderly application of its approval provisions to the covered entities.

(b) Understanding concerning special waste from health care related facilities.

(1) The Texas Natural Resource Conservation Commission will:

(A) keep the Texas Department of Health informed of any need to amend the Texas Natural Resource Conservation Commission rules related to special waste from health care related facilities, and, if needed, will work closely with the Texas Department of Health to revise its rules;

(B) inform the Texas Department of Health of all treatment technologies, equipment or processes that fail to meet the Department of Health's Performance Standards;

(C) notify the Texas Department of Health concerning formal enforcement actions that involve treatment technologies, equipment or processes;

(D) allow the Texas Department of Health's approved methods for the treatment of special waste from health care related facilities to be used to process said waste in Municipal Solid Waste Type V facilities;

(E) allow special wastes from health care related facilities that have been treated by a Texas Department of Health approved process to be disposed of at Municipal Solid Waste Type I facilities; and

(F) apply the Texas Department of Health's standards for special waste from health care- related facilities.

(2) The Texas Department of Health will:

(A) keep the Texas Natural Resource Conservation Commission informed of any need to amend the Texas Department of Health Rules for Special Waste from Health Care Related Facilities, and, if needed, will work closely with the Texas Natural Resource Conservation Commission to revise its rules;

(B) provide the Texas Natural Resource Conservation Commission with a listing of the approved alternative treatment technologies by manufacturer, model identification, and other specifics as needed;

(C) upon request, provide the Texas Natural Resource Conservation Commission with documentation provided by the manufacturers of commercially-available technologies, equipment, or processes approved for the treatment of special waste from health care-related facilities; and

(D) provide the Texas Natural Resource Conservation Commission with a listing of the waste categories that may be treated with each approved alternative technology.

(c) Disclaimer. This Memorandum of Understanding is being entered into by the Texas Natural Resource Conservation Commission and the Texas Department of Health, and is not intended to affect the jurisdiction of any other governmental entities.

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes a new Chapter 328, concerning Waste Minimization and Recycling. The commission proposes a new Subchapter A, §328.1, concerning Purpose; a new Subchapter B, §§328.6-328.9., concerning Recycling, Reuse, and Materials Recovery; a new Subchapter C, §§328.11-328.19, concerning Management of Lead-Acid Batteries; a new Subchapter D, §§328.21-328.30, concerning Used Oil Filter Collection, Management, and Recycling; a new Subchapter E, §§328.41-328.47, concerning Grants Pertaining to the Collection, Reuse, and Recycling of Used Oil; a new Subchapter F, §§328.51-328.71, concerning Management of Used or Scrap Tires; and a new Subchapter G, §§328.100-328.105, concerning Newsprint Recycling.

#### EXPLANATION OF PROPOSED RULES

The commission proposes new Chapter 328, concerning Waste Minimization and Recycling, and consisting of new §§328.1, 328.6-328.9, 328.11-328.19, 328.21-328.30, 328.41-328.47, 328.51-328.71, and 328.100-328.105 which are being moved from existing sections in Chapter 330. The rule language is being moved because it is more appropriately placed in Chapter 328 where recycling related rules will be placed. No changes have been made to the substance of the previously existing rules. The sections are merely being moved from Chapter 330 to Chapter 328 for organizational purposes.

The following paragraphs describe the proposed language in Chapter 328 by subchapter.

**SUBCHAPTER A: PURPOSE.**

The commission proposes new §328.1, concerning Purpose. This new section is created to outline the waste minimization and recycling chapter.

**SUBCHAPTER B: RECYCLING, REUSE, AND MATERIALS RECOVERY.**

The commission proposes new §328.6, concerning Purpose. This section is being moved from currently existing §330.1051, concerning Purpose and Scope. No substantive changes have been made to the previously existing language. One non-substantive change that is being made is to delete a reference to a date that has been superceded.

The commission proposes new §328.7, concerning Definitions of Terms and Abbreviations. This section is being moved from currently existing §330.1052, concerning Definitions of Terms and Abbreviations. No changes have been made to the currently existing rule language. The section is merely being moved for organizational purposes.

The commission proposes new §328.8, concerning Recordkeeping and Reporting Requirements. This section is being moved from currently existing §330.1053, concerning Recordkeeping and Reporting Requirements. The only language change made is to reflect the change in program administration from the Texas Department of Health to the Texas Natural Resource Conservation Commission.

The commission proposes new §328.9, concerning Recycling, Waste Stream Reduction, and Per Capita Waste Generation Rates. This section is being moved from currently existing §330.1054, concerning

Recycling, Waste Stream Reduction, and Per Capita Waste Generation Rates. No changes have been made to the language as originally adopted.

#### SUBCHAPTER C: MANAGEMENT OF LEAD-ACID BATTERIES.

The commission proposes new §328.11, concerning Purpose. This section is being moved from currently existing §330.1101, concerning Purpose. No change to the language is being made.

The commission proposes new §328.12, concerning Applicability. This section is being moved from currently existing §330.1102, concerning Applicability. A change to a cite referencing the Texas Health and Safety Code is being made to reflect an amended statute.

The commission proposes new §328.13, concerning Disposal of Batteries. This section is being moved from currently existing §330.1103, concerning Disposal of Batteries. No change to the language is being made.

The commission proposes new §328.14, concerning Retail Sale of Lead-acid Batteries. This section is being moved from currently existing §330.1104, concerning Retail Sale of Lead-acid Batteries. The only language change made is to reflect the change in program administration from the Texas Department of Health to the Texas Natural Resource Conservation Commission.

The commission proposes new §328.15, concerning Wholesale Sale of Lead-acid Batteries. This section is being moved from currently existing §330.1105, concerning Wholesale Sale of Lead-acid

Batteries. The only language change made is to reflect the change in program administration from the Texas Department of Health to the Texas Natural Resource Conservation Commission.

The commission proposes new §328.16, concerning Notice Requirements. This section is being moved from currently existing §330.1106, concerning Notice Requirements. The only language change made is to reflect the change in program administration from the Texas Department of Health to the Texas Natural Resource Conservation Commission.

The commission proposes new §328.17, concerning Recordkeeping. This section is being moved from currently existing §330.1107, concerning Recordkeeping. The only language change made is to reflect the change in program administration from the Texas Department of Health to the Texas Natural Resource Conservation Commission.

The commission proposes new §328.18, concerning Inspection of Battery Retailers. This section is being moved from currently existing §330.1108, concerning Inspection of Battery Retailers. The only language change made is to reflect the change in program administration from the Texas Department of Health to the Texas Natural Resource Conservation Commission.

The commission proposes new §328.19, concerning Penalties. This section is being moved from currently existing §330.1109, concerning Penalties. A change is proposed to reflect the change in program administration from the Texas Department of Health to the Texas Natural Resource

Conservation Commission. The reference to existing §330.222 is being deleted because the section is obsolete.

#### SUBCHAPTER D: USED OIL FILTER COLLECTION, MANAGEMENT, AND RECYCLING.

The commission proposes new §328.21 - 328.30, concerning Used Oil Filter Collection, Management, and Recycling. Existing §§330.1180-330.1189 are proposed to be moved to Subchapter D with no substantive changes with the following exceptions. Existing §§330.1183(a), 1183(a)(1), and 330.1185(a)(1) are being amended to reflect new registration form numbers and renumbered as proposed §§328.24(a), 328.25(a)(1), 328.26(a)(1).

#### SUBCHAPTER E: GRANTS PERTAINING TO THE COLLECTION, REUSE, AND RECYCLING OF USED OIL

The commission proposes new §§328.41-328.47, concerning Grants Pertaining to the Collection, Reuse, and Recycling of Used Oil. Existing §§330.970 - 330.976 are being moved to §§328.41-328.47 with no changes.

#### SUBCHAPTER F: MANAGEMENT OF USED OR SCRAP TIRES

The commission proposes new §§328.51 - 328.71, concerning Management of Used or Scrap Tires. These proposed sections will replace §§801 - 821 of Chapter 330 of this title with the following amendments.

Existing §330.805(6)(A)(viii), concerning Registration Requirements, will be amended to remove the reference to application fees which are no longer required and moved to Section 328.55(6)(A)(viii).

Existing §330.809(b)(5), concerning Storage of Used or Scrap Tires or Tire Pieces, will be amended to correctly cite a reference and moved to §328.59(b)(5).

Existing §330.810(c), concerning Scrap Tire Storage Site Registration, will be amended to remove the reference to application fees because application fees are no longer required. This section will be moved to §328.60(c).

#### SUBCHAPTER G: NEWSPRINT RECYCLING.

The commission proposes new §§328.100 - 328.105, concerning Newsprint Recycling. Existing §330.1200, concerning Purpose and Definitions, will be moved to proposed §328.100 and existing §330.1200(a) will be amended to delete inappropriate language that speaks to rules being guidelines.

Existing §330.1200(b), concerning Purpose and Definitions, will be amended to change a reference from Texas Water Commission to the Texas Natural Resource Conservation Commission and moved to proposed §328.100(b).

Existing §330.1201, concerning General Guidelines and Requirements, will be moved to proposed §328.101 with a reference change only.

Existing §330.1202, concerning Requirements, will be moved to proposed §328.102 with no changes.

Existing §330.1203, concerning Reports, will be moved to proposed §328.103, concerning Reports, will be moved to §328.103 and an obsolete date in existing §330.1203 will be deleted.

Existing §330.1204, concerning Joint Review, will be moved to proposed §328.104 with no changes.

Existing §330.1205, concerning Enforcement, will be moved to proposed §328.105 with no changes.

#### STATUTORY AUTHORITY

The sections are 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; under 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; under Texas Health and Safety Code §371.023 which allows the commission to adopt standards for criteria for the award of grants for used oil; under the authority of the Texas Health and Safety Code, §371.024(c) which allows the commission to adopt standards for public used oil collection centers; under Texas Health and Safety Code, §371.026 which allows the commission to adopt rules governing used oil transporters, marketers, and recyclers; and under Texas Health and Safety Code, §371.028 which allows the commission to adopt rules concerning used oil collection management and recycling.

The sections are also proposed under the commission's authority to control the management of municipal solid waste under Texas Health and Safety Code, §361.011, and §361.024, Chapter 361, Solid Waste Disposal Act.

These new sections are 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 sections implement Texas Health and Safety Code, §361.112, concerning Storage, Transportation, and Disposal of Used or Scrap Tires; Texas Health and Safety Code, §371.023, concerning Grants to Local Governments; §371.024, concerning Collection Facilities; §371.026, concerning Registration of Persons Transporting, Marketing ,or Recycling Used Oil; and §371.028, concerning Rules.

FISCAL NOTE

Bob Orozco, Financial Administration Division, has determined that for the first five-year period the sections are in effect, there will be no new significant fiscal implications anticipated for state or local government as a result of enforcing or administering these sections.

#### PUBLIC BENEFIT

Mr. Orozco also has determined that for each year of the first five years the sections are in effect, the anticipated public benefit will be that the rules will conform to the commission's guidelines for regulatory reform. This will increase the readability of the rule, thus assisting the public and the regulated community in their understanding of the regulation. The additional changes are proposed to clarify existing rule language and make the rule consistent with current procedures and will benefit the public in that the rule will better reflect the TNRCC's current operating procedures.

The proposed language does not impose significant new requirements on the regulated community, small businesses, or persons who are required to comply with the sections as proposed.

#### DRAFT REGULATORY IMPACT ANALYSIS

This rulemaking is not subject to §2001.0225 of the Texas Government Code 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). Specifically, the proposal does not exceed a standard set by federal law. 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 that will be affected by these non-substantive changes. The

proposed changes are not being made under the general powers of the commission, but are being made under the requirements of specific state law that allows the commission to provide these waste management programs, and under a requirement of the General Appropriations Act, Section 167, which requires state agencies to review and consider for reoption the rules adopted under the Administrative Procedure Act. The existing rules are still needed because they implement critical portions of the state law concerning solid waste management.

The economy, a sector of the economy, productivity, competition, or jobs, will not be adversely affected in a material way because no significant changes are being proposed regarding the procedures and criteria to be used by the commission and any regulated entities for regulated activities under this chapter. The proposed changes should benefit the economy, a sector of the economy, and productivity by clarifying existing requirements and making the rules easier to understand. As the existing rules are protective of human health and the environment, this proposal does not result in a decrease in the protection of the environment or human health.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the proposed rule is to organize a new chapter containing recycling requirements that were previously found in Chapter 330. Promulgation and enforcement of the proposed rule will not create a burden on private real property.

## COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this proposed rulemaking action is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resource Conservation Commission. 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, 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 reviewed this proposed rulemaking action for consistency, and has determined that this proposed rulemaking action is consistent with the applicable CMP goals and policies.

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 rule modifications will merely provide a clearer set of rules that currently

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 no new impact upon the coastal area. Interested persons may submit comments on the consistency of the proposed rules with the CMP goals and policies during the public comment period.

#### PUBLIC HEARING.

A public hearing on this proposal will be not be held unless one is requested.

#### 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 98056-330-WS. Comments must be received by 5:00 p.m., April 12, 1999. For further information, please contact Wayne Lee, of the Waste Policy and Regulations Division, at (512) 239-6815.

#### STATUTORY AUTHORITY

The new sections are 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. Additionally, Texas Health and Safety Code Section 371.023 provides the commission with the authority to adopt rules to establish procedures for the application and criteria for the award of used oil grants.

The review of the commission's rules is proposed under Article IX, Section 167, General Appropriations Act, 75th Legislature, 1997.

The proposed sections implement Texas Health and Safety Code, §361.024 and §371.023.

## **SUBCHAPTER A : PURPOSE**

### **§328.1**

#### **§328.1. Purpose.**

The purpose of this chapter is to establish regulations that support the diversion of materials from solid waste streams, to promote the economic recovery and reuse of materials, and to support the development of markets for recycled, remanufactured or environmentally sensitive products or services in a sustainable manner that protects the environment, public health and safety.

**SUBCHAPTER B : RECYCLING, REUSE, AND MATERIALS RECOVERY**

**§§328.6-328.9**

**STATUTORY AUTHORITY**

The new sections are 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. 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 Section 361.430 provides the commission with the authority to establish a newsprint recycling program.

The proposed sections implement Texas Health and Safety Code, §§361.024 and 361.422, and 361.430.

**§328.6. Purpose and Scope.**

(a) Purpose. The purpose of this subchapter is to establish reporting requirements through which progress toward achieving the established recycling goals can be measured. It is the state's goal to achieve the recycling of at least 40% of the state's total municipal solid waste stream.

(b) Scope. These sections shall be used to determine local, regional, and statewide recycling rates. These sections also provide guidance for determining waste stream reduction and per capita waste generation rates.

**§328.7. Definitions of Terms and Abbreviations.**

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

(1) **Base year** - The year 1990 used as a reference for recycling credit limits and for determining the amount of waste reduced at the source.

(2) **Municipal sludge** - Any solid, semisolid, or liquid waste generated from a municipal wastewater treatment plant, water supply treatment plant, or any other such waste having similar characteristics and effect, exclusive of the treated effluent from a wastewater treatment plant.

(3) **Net tons of waste exported** - The difference between that portion of the municipal waste stream generated within specific geographic boundaries and exported for disposal and that portion which is generated outside the boundaries and imported for disposal during a specified time period.

(4) **Recycling rate** - That percentage of the municipal solid waste stream which is recovered or diverted for recycling.

(5) **Source-reduced waste** - A material or product, previously or typically entering the municipal solid waste stream, which has been prevented from entering that stream through source reduction.

(6) **Source reduction** - Any action that averts the discarding of products or materials by reducing material use or waste at the source, including redesigning products or packaging so that less material is used, voluntary or imposed behavioral changes in the use and reuse on site of materials or products, or increasing durability or reusability of materials or products.

(7) **Total municipal solid waste stream** - The sum of the state's total municipal solid waste that is disposed of as solid waste, measured in tons, and the total number of tons of recyclable material that has been diverted or recovered from the total municipal solid waste and recycled.

(8) **Waste stream reduction rate** - That percentage of the municipal solid waste stream which is source-reduced or recovered or diverted for recycling.

**§328.8. Recordkeeping and Reporting Requirements.**

(a) Annual rates. Annually, the commission shall determine the statewide recycling rate and, when possible, the waste stream reduction and per capita waste generation rates. Also, when possible, the executive director shall determine the rates for specific materials and for particular geographic areas of the state.

(b) Recordkeeping. Processors, handlers, and collectors of recyclable materials are encouraged to report and keep appropriate records to facilitate measuring recycling rates. The executive director shall protect confidential information received from these businesses to the extent authorized by law.

(c) Multiple counting. Diligence shall be practiced in collecting and reporting information to prevent multiple counting of any materials. Usually, materials will be counted as they are transferred to a recyclable material end-user or consumer in the state or as they are transferred out of state. The quantities of materials rejected and disposed of by the end-user shall be deducted from the quantities counted for recycling.

(d) Required minimum information for reporting. The following information at a minimum shall accompany the reporting of recycling rates for clarification:

- (1) report area or geographic area covered by the report;

(2) reporting period--the year or portion of a year covered by the report;

(3) tons of each material, categorized per subsection (e) of this section, recovered or diverted for recycling from the total municipal solid waste stream generated within the report area during the report period;

(4) tons of municipal solid waste generated within the report area during the report period;

(5) tons of municipal solid waste generated during the report period within the report area but disposed of outside the report area;

(6) tons of municipal solid waste generated outside the report area but disposed of inside the report area during the report period;

(7) average populations within the report area during the report period and the base year, 1990; and

(8) the calculated recycling, waste stream reduction, and per capita waste generation rates using the formulas contained in §330.9 of this title (relating to Recycling, Waste Stream Reduction, and Per Capita Waste Generation Rates).

(e) Materials recovered or diverted for recycling. To the extent possible, materials recovered or diverted for recycling shall be reported according to the following categories, using the major categories when finer detail is not possible:

(1) food waste;

(2) glass:

(A) glass containers;

(B) plate glass; and

(C) other glass;

(3) leather and hides;

(4) metal:

(A) aluminum:

(i) cans and containers; and

(ii) other aluminum;

(B) ferrous metal:

(i) steel cans and containers; and

(ii) other ferrous metal;

(C) other nonferrous metal;

(5) paper and paperboard:

(A) computer printout;

(B) white ledger;

(C) colored ledger;

(D) old corrugated cartons/kraft;

(E) old newspaper;

(F) printers' waste;

(G) old magazines;

(H) mixed paper; and

(I) other paper and paperboard;

(6) plastic:

(A) plastic containers:

(i) polyethylene terephthalate (PET, or Code 1 plastic);

(ii) high density polyethylene (HDPE, or Code 2 plastic);

(iii) polyvinyl chloride (PVC, or Code 3 plastic);

(iv) low density polyethylene (LDPE, or Code 4 plastic);

(v) polypropylene (PP, or Code 5 plastic);

(vi) polystyrene (PS, or Code 6 plastic); and

(vii) other plastic containers (Code 7 plastic);

(B) mixed plastic; and

(C) other plastic;

(7) rubber;

(8) textiles and apparel;

(9) wood;

(10) yard debris; and

(11) other materials, not included elsewhere:

(A) asphalt pavement;

(B) appliances;

- (C) batteries:
  - (i) household; and
  - (ii) lead-acid;
- (D) construction-demolition debris;
- (E) hazardous household materials;
- (F) municipal sludge;
- (G) tires;
- (H) used oil and oil filters;
- (I) other inorganic materials;
- (J) other organic materials; and
- (K) other municipal solid waste materials.

(f) Units. All materials shall be reported in dry tons. For those materials normally measured by volume, the report shall indicate the volumetric quantity and the multiplier used to convert to weight in dry tons.

(g) Recycling credit limits. Except for lead-acid batteries, only the amount recycled in addition to 1990 quantities can be credited toward the state recycling goal for materials with an individual recycling rate greater than 80% in the base year, 1990.

**§328.9. Recycling, Waste Stream Reduction, and Per Capita Waste Generation Rates.**

(a) Recycling rate. The recycling rate is calculated by dividing the tons of material recovered or diverted for recycling by the tons of total municipal solid waste generated, where the total municipal solid waste generated is the sum of the tons recycled, the tons disposed of, and tons of waste exported minus the tons of waste imported. The formula for the recycling rate can be expressed as follows.

Figure: 30 TAC §328.9(a)

(b) Waste stream reduction rate. The waste stream reduction rate is calculated by dividing the sum of the tons recycled and tons source-reduced by the sum of the tons recycled, tons source-reduced, tons disposed of, and net tons of waste exported. The formula for the diversion rate can be expressed as follows.

Figure: 30 TAC §328.9(b)

(c) Per capita waste generation rates.

(1) Per capita annual waste generation rate. The per capita annual waste generation rate is calculated by dividing the annual tons of municipal solid waste generated by the population of the area. The formula for this term can be expressed as follows.

Figure: 30 TAC §328.9(c)(1)

(2) Per capita daily waste generation rate. The per capita daily waste generation rate is calculated by dividing the annual rate, in paragraph (1) of this subsection, by 365 days as follows.

Figure: 30 TAC §328.9(c)(2)

**SUBCHAPTER C : MANAGEMENT OF LEAD-ACID BATTERIES**

**§§328.11-328.19**

**STATUTORY AUTHORITY**

The new sections are 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 review of the commission's rules is proposed under Article IX, Section 167, General Appropriations Act, 75th Legislature, 1997.

The proposed sections implement Texas Health and Safety Code, §361.024 and §§361.451 and 361.452.

**§328.11. Purpose.**

The purpose of the sections in this subchapter is to establish procedures and requirements for the sale and disposal of secondary or storage batteries that are made of a lead-acid combination.

**§328.12. Applicability.**

(a) The sections in this subchapter are applicable to persons who are involved in the sale, transportation, collection for recycling, and disposal of lead-acid type storage or secondary batteries regulated by the commission pursuant to the Texas Health and Safety Code, §§361.451-361.454.

(b) While these sections are only applicable specifically to lead-acid type storage or secondary batteries, any other type of multi-cell storage or secondary battery, primary battery, nuclear cell, solar cell, or fuel cell should be managed in a similar manner.

**§328.13. Disposal of Batteries.**

(a) No person may place a used lead-acid battery in mixed municipal solid waste or discard or otherwise dispose of a lead-acid battery except by delivery to:

- (1) a battery retailer;

(2) a battery wholesaler;

(3) a secondary lead smelter; or

(4) a collection or recycling facility authorized under the laws of this state or by the Environmental Protection Agency (EPA).

(b) A battery retailer shall dispose of used lead-acid batteries only by delivery to:

(1) a battery wholesaler or an agent thereof;

(2) a secondary lead smelter or an agent thereof;

(3) a battery manufacturer for delivery to a secondary lead smelter; or

(4) a collection or recycling facility authorized under the laws of this state or by the EPA.

**§328.14. Retail Sale of Lead-acid Batteries.**

A battery retailer in Texas shall:

(1) accept from the customer, if offered by the customer, at the point of transfer, a used lead-acid battery of the type and in a quantity equal to the number of new lead-acid batteries sold; and

(2) post written notice, containing the universal recycling symbol, concerning the sale and disposal of lead-acid batteries. The written notice shall conform to the requirements of §330.16 of this title (relating to Notice Requirements) and shall be provided by the commission.

**§328.15. Wholesale Sale of Lead-acid Batteries.**

A battery wholesaler in Texas shall:

(1) accept from the customer, if offered by the customer, at the point of transfer, used lead-acid batteries of the type and in a quantity equal to the number of new lead-acid batteries sold; or

(2) if accepting batteries in transfer from a battery retailer or retail facility, remove all used lead-acid batteries from the retail point of collection within 90 days after acceptance; and

(3) shall post written notice, containing the universal recycling symbol, concerning the sale and disposal of lead-acid batteries. The notice shall conform to the requirements of §330.16 of this title (relating to Notice Requirements) and shall be provided by the commission.

**§328.16. Notice Requirements.**

(a) A battery retailer or wholesaler shall post in a place visible to all customers a conspicuous notice in both English and Spanish containing the universal recycling symbol concerning the sale and disposal of lead-acid batteries.

(b) The notice shall be a sign at least 8 ½ inches by 11 inches in size and shall be provided by the commission, and shall contain the following language:

(1) "It is illegal (Class C Misdemeanor) to discard or improperly dispose of a motor-vehicle battery or other lead-acid battery";

(2) "Recycle your used batteries"; and

(3) "State law requires us to accept used motor-vehicle batteries for recycling in exchange for new batteries purchased."

**§328.17. Recordkeeping.**

(a) Battery retailers and battery wholesalers shall, as a minimum, maintain a record of the number of lead-acid batteries that are purchased, the number of lead-acid batteries that are accepted in

return for new batteries sold (trade-ins), and the number of lead-acid batteries that are delivered to a disposal facility.

(b) The records required under this section shall be maintained on a monthly basis and shall be kept for a period of three years. These records shall be made available to any representative of the commission upon request.

**§328.18. Inspection of Battery Retailers.**

A representative of the commission may enter any place, building, or premise of a battery retailer for the purpose of inspecting the facility for compliance with this subchapter. The inspection or investigation will be made only during regular business hours or by appointment for any other time.

**§328.19. Penalties.**

(a) It is a violation of this subchapter for a battery retailer or wholesaler to:

- (1) fail to maintain correct and complete records;
- (2) fail to comply with the provisions of this subchapter; or

(3) fail to comply with written warnings, citations, or directions given by the commission.

(b) A battery retailer or wholesaler who violates this subchapter is subject to the assessment of administrative penalties and/or civil penalties as prescribed by state law.

**SUBCHAPTER D : USED OIL FILTER COLLECTION, MANAGEMENT AND RECYCLING**

**§§328.21-328.30**

**STATUTORY AUTHORITY**

The new sections are 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. Additionally, Texas Health and Safety Code Section 371.028 provides the commission with the authority to adopt rules to govern used oil filter collection, management, and recycling.

The review of the commission's rules is proposed under Article IX, Section 167, General Appropriations Act, 75th Legislature, 1997.

The proposed sections implement Texas Health and Safety Code, §361.024 and §371.028.

**§328.21. Applicability.**

(a) The sections in this subchapter are applicable to persons who are involved in generating, storing, transporting, handling, and processing used oil filters and their components. These sections do not apply to persons that are industrial generators and are registered with the TNRCC as Industrial/Hazardous waste facilities or that are under the waste management authority of a state agency other than the TNRCC, in which case the regulations of that state agency apply.

(b) Used oil filters that are regulated by the Railroad Commission of Texas under §91.101 of the Natural Resources Code shall not be subject to regulation under this subchapter. However, used oil filters regulated by the Railroad Commission of Texas under §91.101 of the Natural Resources Code may be delivered to a transporter, storer, or processor registered with TNRCC for the purpose of recycling if the requirements of §328.30 of this title (relating to Generators Regulated by the Railroad Commission of Texas) are met.

**§328.22. Definitions.**

The following words, terms, and abbreviations when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Other definitions pertinent to these and other sections are contained in Subchapter A, §330.5 of this title (relating to Definitions).

(1) **Bill of Lading** - A document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods.

(2) **Do-it-yourself (DIY) used oil filter** - Used oil filter that is generated by an individual who changes his/her own oil filter.

(3) **Drained oil filter** - A used oil filter which has been hot drained or otherwise processed to the standards set forth in §328.27 of this title (relating to Public Used Oil Filter Collection Centers and Used Oil Filter Generators) to remove all of the free-flowing oil.

(4) **End user** - Persons who utilize the processed used oil filter or its components as feedstock for the manufacturing of finished products; and, persons who in the opinion of the executive director recycle, as defined herein, the UOF or its components.

(5) **Free-flowing oil** - A noticeable stream of oil exiting the used oil filter at 60 degrees Fahrenheit when the filter is lifted by hand or by machinery.

(6) **Generator** - Person whose act or process produces used oil filters, excluding do-it-yourselfers.

(7) **Hot draining** - The process by which an oil filter is punctured and drained near engine operating temperatures and above room temperature (i.e., 60 degrees Fahrenheit) for a sufficient period of time to remove the free-flowing oil.

(8) **Oil filter** - An integral part of an oil-flow system, the purpose of which is to remove contaminants from the flowing oil contained within the system.

(9) **Oil weight** - The weight added to an oil filter through its use in an oil-flow system. Oil weight may be calculated by deducting the weight of a new or unused filter from the weight of a properly drained oil filter of identical style and type.

(10) **Person** - An individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any other interstate body.

(11) **Processing** - The act of preparing the used oil filter and its components for recycling. Processing must include a means of removing all free-flowing oil from the filter components, and must meet the processing standards set forth in §328.26 of this title (relating to Processors).

(12) **Processor** - A person who processes used oil filters, generated by others, for the purpose of preparing such filters for recycling.

(13) **Public used-oil-filter collection center (Collection Center)** - A facility which accepts do-it-yourself used oil filters. Such centers include, but are not necessarily limited to:

(A) automotive service facilities that in the course of business accept, for recycling, used oil filters from individuals;

(B) facilities that store used oil filters in above-ground containers and that in the course of business accept, for recycling, used oil filters from individuals; and

(C) publicly sponsored collection facilities that are designated and authorized by the TNRCC to accept, for recycling, used oil filters from individuals.

(14) **Recycling** - The legitimate use, reuse, or reclamation of a solid waste.

(15) **Storage** - The holding of used oil filters for a temporary period, at the end of which time the used oil filters are processed, recycled or disposed.

(16) **Storage facility** - A facility which is used to store more than six 55-gallon drums or containers, or the volumetric equivalent, of used oil filters.

(17) **Terne** - An alloy of tin and lead which may be used to plate oil filters. Terne-plating may cause sections of a used oil filter to exhibit the hazardous characteristic of toxicity for lead.

(18) **Transporter** - A person engaged in the off-site transportation of used oil filters.

(19) **Used oil** - Any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

(20) **Used oil filter (UOF)** - A non-terne-plated oil filter that as a result of its use, storage or handling has become contaminated by physical or chemical impurities, and has been removed from service. This does not include a UOF which remains with an engine block which is recycled.

(21) **UOF management plan** - A description of a person's management practices pertaining to UOFs.

**§328.23. General Requirements.** Any person generating, storing, transporting, processing or handling UOFs shall:

(A) Immediately remediate all spills and releases from UOFs. The facility shall have equipment sufficient to respond to a spill volume equivalent to ten (10) gallons for every 55-gallon drum or volumetric equivalent. If a facility has a Spill Prevention Control and Countermeasure Plan (See Clean Water Act, 42 U.S.C § 112), or an equivalent Federal or State spill response plan approved by the executive director, it shall be deemed to be in compliance with this requirement. Such plan shall

be retained on site and be available upon request by the Texas Natural Resource Conservation Commission (TNRCC) or its representative.

(B) Not sell, convey, or otherwise transfer to an end user, a UOF which has not been processed to the processing standards set forth in §328.26(b) of this title (relating to Processors).

(C) Comply with all applicable federal, state and local regulations.

(D) Retain all required records on-site for a minimum of three years and make such records available for inspection on site by the TNRCC or its representative upon request.

(E) Remove from service, or repair, any container used for storage of UOFs that is found to be leaking or in poor condition, ensuring that only nonleaking containers are provided for UOF storage.

**§328.24. Storage Facilities.**

(a) Any person storing more than six 55-gallon containers of used oil filters (UOFs), or the volumetric equivalent, must register with the Texas Natural Resource Conservation Commission (TNRCC) as a UOF storage facility using the TNRCC Form TNRCC-10062. Persons storing UOFs may store up to six 55-gallon containers, or the volumetric equivalent, of UOFs without registering as a storage facility.

(b) No storage facility may cause, suffer, allow, or permit the discharge from a point source of any waste or of any pollutant, or the performance or failure or any activity other than a discharge, in violation of the Texas Water Code, Chapter 26.

(c) The storage facility shall be required to provide evidence of financial responsibility as the commission deems necessary to assure the commission that the storage facility has sufficient assets to provide for the proper closure. Financial assurance for closure may be demonstrated by using one or more of the following mechanisms: trust funds, surety bonds guaranteeing payment or performance, letters of credit, insurance, or financial test and corporate guarantee. These mechanisms shall be prepared on forms approved by the executive director. Proof of compliance shall be submitted to the TNRCC with a completed UOF-storage- facility registration form.

(d) A person who owns or operates a storage facility:

(1) Shall register by January 25th of each year with the Automotive Waste Recycling Program of the TNRCC as a UOF storage facility, utilizing registration forms prescribed by the TNRCC.

(2) Shall report by January 25th of each year the amount of UOFs received, sources of UOFs, and name and location of destinations and amounts shipped to those destinations during the previous calendar year.

(3) May not store a UOF for more than 90 days. At the end of such time, the stored UOFs must be either processed, shipped to a registered processor for processing or disposed. The executive director may, at his or her discretion, extend the 90-day time period upon a written request by the registered storage facility indicating just cause beyond the storage facility's control.

(e) Storage facilities must comply with the following standards:

(1) UOFs must be stored in a covered enclosure or in covered rainproof containers.

All storage containers must be capable of containing any used oil that may be separate from the filters placed inside.

(2) UOFs must be stored in containers clearly labeled with the phrase "Used Oil Filters" in letters at least three (3) inches high. The name of the owner of the container and the owner's phone number shall be imprinted on the container and clearly legible.

(3) Storage facilities must have a secondary containment system capable of containing an amount of oil equal to ten (10) gallons for every 55- gallon drum or volumetric equivalent. The containment system must be sufficiently impervious to prevent any used oil released into the system from migrating out of the system to the soil, groundwater or surface water, and must consist of, at a minimum:

(A) A dike, berm or retaining wall; and

(B) A floor which must cover the entire area within the dike, berm, or retaining wall.

(f) A storage facility may, as an alternative to meeting the standards delineated in subsection (e) of this section, submit to the executive director for approval a Used Oil Filter Management Plan (management plan) demonstrating to the satisfaction of the executive director the equivalency of an alternative method of storing UOFs. To be considered, the alternate method must meet the objective of protecting the environmental quality of the State of Texas at least as effectively as the management standards contained herein. An approved copy of the management plan must be retained on-site and must be available for inspection by the TNRCC or its representative upon request.

(g) In addition to complying with all the requirements delineated in this section, all storage facilities receiving UOFs generated off-site must ship only to a processor registered as a UOF processor with the TNRCC, an end user or a permitted disposal facility. This subsection does not apply to generators and/or public UOF collection centers that only accept UOFs from a DIYer.

**§328.25. Transportation of Used Oil Filters.**

(a) A person who transports Used Oil Filters (UOFs) shall:

(1) Register by January 25th of each year with the Automotive Waste Recycling Program of the TNRCC as a UOF transporter, utilizing TNRCC form TNRCC-10062. Registrants

shall provide proof of financial responsibility in a form and amount approved by the TNRCC. Proof of compliance shall be submitted to the TNRCC with a UOF transporter registration form.

(2) Report by January 25th of each year the amount of UOFs received, sources of UOFs, the name and location of storage facilities, processors, end users, and/or disposal facilities which receive the UOFs, and the amounts shipped to the processors or end user for the activities of the previous calendar year.

(3) Comply with all applicable Federal, State, and local regulations, including the United States Department of Transportation (DOT) regulations, such as placarding, insurance requirements and any necessary Federal, State, and local permits as required.

(4) Ensure that all UOFs are accompanied by a bill of lading demonstrating a transfer of custody of the UOFs from the shipping facility to the registered transporter, and from the transporter to a registered storage facility, registered (secondary) transporter, processor, end-user or permitted disposal facility. The bill of lading shall contain the date of such transfer, the name and physical address of the shipping facility, the name and address of the receiving facility, the name and address of the transporter, the quantity of UOFs removed and any other information which the executive director may deem necessary to protect the environmental quality of the State of Texas. The shipping facility must verify the information contained within the bill of lading, and demonstrate concurrence by the signature upon the bill of lading signature of an authorized representative of the shipping facility.

(5) Retain on-site, and make available for inspection by the TNRCC or its representative upon request, copies of all bills of lading demonstrating transfer of custody of UOFs for a minimum of three (3) years.

(A) For a transporter that does not have a structure capable of competently storing the required documents at the facility from which he operates his business (i.e. truck parking and/or UOF storage), a transporter may store the required documents at the local business office from which he conducts the administrative portion of his business.

(B) For a transporter operating multiple locations, the transporter may store two (2) of the three (3) years required at a central business location if such records will be made available to the TNRCC or its representative upon request, within five (5) working days after such request; however, the most current year must be maintained at the transporter's operations facility, or at a local business office if no structure capable of competently storing exist at the transporter's operations facility.

(6) Ensure that all UOFs are delivered to a currently registered UOF processor, registered UOF storage facility, registered UOF (secondary) transporter, permitted disposal facility, or end user.

(7) Ensure that all accepted containers are properly labeled, sealed, and loaded in a manner which reduces shifting and loss of cargo.

(8) Have at least one "spill kit" and all necessary fire equipment on board. The spill kit must include the proper garments, instructions and tools needed in the event of a spill, fire, storm damage, or industrial accident.

(b) Persons transporting UOFs may transport up to two 55- gallon containers, or the volumetric equivalent, of UOFs without registering as a UOF transporter.

(c) In addition to complying with all the requirements delineated in subsection (a) (1)-(9) of this section, all transporters transporting UOFs generated by persons other than the transporter, or transporting UOFs received by the transporter from a DIY generator:

(1) May store collected UOFs for a period of ten (10) days or less without being required to register as a storage facility.

(2) Shall notify the generator and collection center of any changes to the shipping documentation, including, but not limited to, a change in destination. A written notification must be received by the generator and collection center within two (2) weeks of such change(s).

**§328.26. Processors.**

(a) A person who processes UOFs shall:

(1) Register by January 25th of each year with the Automotive Waste Recycling Program of the TNRCC as a UOF processor, utilizing TNRCC form TNRCC-10062.

(2) Report by January 25th of each year the amount of UOFs received, sources of UOFs, the name and location of end users, disposal facilities, or any other facility receiving UOFs from the processor for the previous calendar years' activities.

(3) Provide evidence of financial responsibility as the commission deems necessary to assure the TNRCC that the processor has sufficient assets to provide proper closure. Financial assurance for closure may be demonstrated by using one or more of the following mechanisms: trust funds, surety bonds guaranteeing payment or performance, letters of credit, insurance or financial test and corporate guarantee. These mechanisms shall be prepared on forms approved by the executive director. Proof of compliance shall be submitted with a completed UOF processor registration form.

(b) A UOF must meet the following processing standards to be considered processed:

(1) the drained UOF has been compressed with a force sufficient to remove eighty percent (80%) of the oil weight remaining in the UOF; or

(2) the UOF has been separated by dismantling, shredding or any other acceptable procedure which separates the whole UOF into its components; or

(3) the UOF meets any standard which may be adopted by a recognized industry association and approved in writing by the executive director, so long as the industry standards requires the removal of free-flowing oil from the filter and prepares the filter for reuse by an end-user; or

(4) the UOF meets any other standard approved in writing by the executive director.

(c) In addition to complying with all the requirements described in subsections (a) and (b) of this section, a person processing UOFs generated off-site shall:

(1) Ensure that all UOFs are accompanied by a bill of lading documenting transfer of custody of UOFs to the processor. All bills of lading shall be retained on-site for a period of three (3) years and be available for inspection by the TNRCC or its representative upon request.

(2) Upon request by the generator or collection center originating a shipment of UOFs received by the processor, provide to the generator or collection center written documentation identifying the recipient of reclaimed materials or waste products resulting from the processing of the UOFs originating from the generator or collection center. Such written evidence shall clearly identify each component resulting from the processing and shall indicate the final destination of each such component.

(d) A processor may not store unprocessed UOFs longer than thirty (30) days. The executive director may, at his or her discretion, extend this time period for an additional 30 days. A processor

who is unable to comply with this storage requirement may apply to the executive director in writing for an extension of this storage period. A processor's storage time limits are initiated at the time the processor takes custody of the UOFs.

(e) A processor must determine the environmental risk associated with the storage of the materials resulting from the processing of the UOFs.

(1) For materials which can be shown to be free of residual oil, the agency places no further restrictions.

(2) For materials which are contaminated by used oil, the processor shall:

(A) make a hazardous waste determination in accordance with 40 Code of Federal Regulations Part 261 on all materials destined for disposal or incineration prior to shipment; and

(B) ship such material within 30 days of generation.

**§328.27. Public Used Oil Filter Collection Centers and Used Oil Filter Generators.**

(a) A generator shall ensure that all free-flowing oil as defined in §328.22 of this title (relating to Definitions) has been removed from UOFs stored on-site. Methods of removal of the free-flowing oil include, but are not limited to, the following:

- (1) puncturing the filter anti-drain valve or the filter dome end and hot-draining;
- (2) hot-draining and crushing;
- (3) dismantling and hot-draining;
- (4) flushing of the UOF; or
- (5) any other equivalent method which will remove the free-flowing oil.

(b) For UOFs accepted from a DIY, the generator or public used oil filter collection center shall remove the free-flowing oil to the greatest extent feasible.

(c) A generator and a person owning or operating a collection center must obtain and keep copies of all UOF shipping documentation, documenting the transfer of custody of the UOFs. All documentation shall be retained on-site for a period of three (3) years, except in cases where a person

owns or operates multiple locations at which UOFs are generated or accepted from DIYers. In those cases records for two (2) of the three (3) years may be stored at a central facility if such records will be made available to the TNRCC or its representative upon request, within five (5) working days after notification by the TNRCC. Records for the most current year must be maintained at the physical location of the facility generating UOFs or accepting UOFs from the public. Persons who own or operate used oil filter collection centers which are unmanned, who only accept UOFs from DIY generators, and who operate multiple locations, may retain the required documentation at a central business location if the records are made available to the TNRCC or its representative within five (5) working days after requested by the TNRCC.

(d) All generators and persons owning or operating a UOF collection center shall arrange with a properly registered UOF transporter for the transport of UOFs to a registered UOF processor, registered UOF storage facility, permitted disposal facility, or an end user. The generator and persons owning or operating a UOF collection center (the shipper) must verify the information contained within the bill of lading, and demonstrate concurrence by the signature of an authorized representative of the shipper upon the bill of lading.

(e) Generators and persons owning or operating collection centers shall prepare each container for transport by assuring that the containers are sealed and an identifying label/number is evident on the container which relates to the bill of lading. This identification number shall be easily recognizable, enabling the TNRCC, or its representative, to assign the container to the required paperwork.

(f) UOFs must be stored in containers clearly labeled with the phrase "Used Oil Filters" in letters at least three (3) inches high. The name of the owner of the container and the owner's phone number shall be imprinted on the container and clearly legible.

(g) In addition to complying with all the requirements delineated in subsections (a)-(e) of this section, all UOF collection centers shall:

(1) Register by January 25th of each year with the Automotive Waste Recycling Program of the TNRCC as a UOF collection center, utilizing TNRCC registration form number TNRCC-0390. Temporary authorization to collect UOFs for one-day events may be obtained through a written request for such authorization submitted to the appropriate Regional Office at least thirty (30) days prior to the proposed date of the event. Registration as a UOF collection center is not required for one-day events which receive written approval from the Regional Office. Also, facilities granted temporary authorization are exempt from the yearly reporting requirement set forth herein.

(2) Report to the TNRCC by January 25th of each year the amount of UOFs received, the amounts shipped, the date of each shipment, the name of the transporter used for each shipment and any other pertinent information the executive director may require regarding the activities of the previous calendar year.

(3) Notify the TNRCC in writing within 30 days if the collection center ceases acceptance of UOFs from the public.

(h) A collection center may charge a reasonable fee sufficient to cover the cost of properly managing DIY-accepted UOFs.

**§328.28. Shipping Documentation.**

(a) Until such time as bills of lading are prescribed by the TNRCC, the information required herein must be retained on-site by the generator, collection center, transporter, storage facility and processor in a form easily discernable by the TNRCC or its representative.

(b) The bill of lading will be a multi-part form used to document the transfer of custody of the UOFs between participating parties. It is the responsibility of the shipping facility to ensure that the bill of lading(s) are legible, complete and accurate as to the information entered thereon which is specific to the shipping facility, prior to release of the UOFs.

(c) The transporter shall transport the UOFs to the UOF facility identified on the bill of lading, and upon delivery to such facility shall retain the transporter copy of the bill of lading which has been signed by the receiver evidencing receipt of the UOFs by the receiver.

**§328.29. Penalties.**

In addition to other penalties provided by law, failure to comply with the rules established herein may result in cancellation or non-renewal of the registration.

**§328.30. Generators Regulated by the Railroad Commission of Texas.**

UOFs described in §328.21 of this title (relating to Applicability) may be delivered to a UOF transporter, storer, or processor registered by the TNRCC for the purpose of recycling, provided that, at the time of delivery.

(1) the UOFs have been drained of free oil as provided in §328.27 of this title (relating to Public Used Oil Filter Collection Centers and Used Oil Filter Generators);

(2) the UOFs are contained and labeled in a manner that complies with the provisions of §328.27; and

(3) the generator complies with provisions of §330.28 of this title (relating to Shipping Documentation) regarding shipping documentation for shipments of UOFs that are transported by the UOF transporter registered by TNRCC.

**SUBCHAPTER E : GRANTS PERTAINING TO THE COLLECTION,  
REUSE, AND RECYCLING OF USED OIL**

**§§328.41-328.47**

**STATUTORY AUTHORITY**

The new sections are 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. Additionally, Texas Health and Safety Code Section 371.023 provides the commission with the authority to adopt rules to establish procedures for the application and criteria for the award of used oil grants.

The review of the commission's rules is proposed under Article IX, Section 167, General Appropriations Act, 75th Legislature, 1997.

The proposed sections implement Texas Health and Safety Code, §361.024 and §371.023.

**§328.41. Purpose and Scope.**

This subchapter describes procedures for announcing, awarding, and administering assistance grants relating to and supporting household do-it-yourselfer used oil collection, reuse, and recycling activities in Texas.

**§328.42. Applicability.**

The requirements of this subchapter are applicable to the award or distribution, by the commission, of funds for the purpose of responding to and/or complying with those authorizations and requirements set forth in the Health and Safety Code, §371.023, which relate to the awarding of grants for household do-it-yourselfer used oil recycling activities.

**§328.43. Authority.**

The commission's authority to conduct and manage the activities described in this subchapter is derived from the Used Oil Collection, Management, and Recycling Act, Health and Safety Code, Chapter 371.

**§328.44. Definitions of Terms and Abbreviations.**

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

(1) **Advisory committee** - A seven member, commission-appointed, committee established in accordance with the Health and Safety Code, §371.023(c), for the purpose of assisting the commission in carrying out an effective used oil recycling grant program. The advisory committee shall:

(A) recommend criteria for grants;

(B) establish guidelines for allowable administrative expenses; and

(C) recommend grant recipients to the commission based on the used oil collection, reuse and recycling needs of this state.

(2) **Container** - A portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

(3) **DIY** - Do-it-yourselfer.

(4) **Do-it-yourselfer used oil collection center** - A site or facility that accepts or aggregates and stores used oil collected only from household do-it-yourselfers. A registered do-it-yourselfer used oil collection center that is also a used oil generator may commingle household do-it-yourselfer used oil with the used oil it generates.

(5) **Household do-it-yourselfer used oil** - Oil that is derived from a household, including used oil generated by an individual through the maintenance of the individual's personal vehicle or equipment.

(6) **Local government** - A county, incorporated city or town, or any political subdivision of the state which has jurisdiction over two or more counties or parts of two or more counties, and which has been granted the power by the legislature to regulate solid waste handling or disposal practices or activities within its jurisdiction in accordance with the Health and Safety Code, §361.165.

(7) **Private entity** - Any business or private organization, including nonprofit organizations, involved in, or desiring to become involved in for the purpose of supporting, used oil collection, reuse and recycling, as may be further determined or described from time to time by the Advisory Committee and subsequently defined in commission-released RFAs.

(8) **RFA** - Request for Applications.

(9) **Used oil collection center** - A site or facility that is registered by the commission to manage used oil and accepts, aggregates, or stores used oil collected from:

(A) used oil generators regulated under 40 CFR Part 279, Subpart C, who transport used oil to the used oil collection center in shipments of not more than 55 gallons under 40 CFR Section 279.24; or

(B) household do-it-yourselfers.

**§328.45. Eligible Grant-Supported Activities.**

(a) Assistance grants awarded under this subchapter shall be for projects that feature or include one or more of the following activities:

(1) curbside pickup of containers of household do-it-yourselfer used oil by a local government or its representative;

(2) retrofitting of municipal solid waste equipment to facilitate curbside pickup of household do-it-yourselfer used oil;

(3) establishment of do-it-yourselfer used oil collection centers and used oil collection centers at locations accessible to the public including landfills, fire stations, retail stores, quick lubrication centers, and automobile repair shops;

(4) provision of containers and other materials and supplies that can be used to store household do-it-yourselfer used oil for pickup or delivery to a do-it-yourselfer used oil collection center in an environmentally sound manner; and

(5) any other do-it-yourselfer related used oil activity determined eligible for receipt of grant funding by the advisory committee appointed by the commission in accordance with the Health and Safety Code, §371.023(c).

(b) Grant funds provided under this subchapter shall not be used to:

(1) acquire land or an interest in land;

(2) construct any waste disposal facility or waste disposal facility improvements (Facilities designed primarily for the collection and temporary storage for recycling of do-it-yourselfer used oil are not considered disposal facilities.);

(3) prepare, or pay others for the preparation of, final designs or working drawings of any waste disposal facility or waste disposal facility improvements;

(4) pay for the disposal of any waste material;

(5) pay for any food, drink, or entertainment, except for necessary meals for the grant recipient's own officials or employees while on official travel status to an event or activity authorized under the grant contract;

(6) pay for lobbying, at any governmental level, either for or against, concerning or related to any proposed legislation or legislative initiative; or

(7) carry out any activity not expressly mentioned in the RFP or RFA.

**§328.46. Eligible Applicants.**

(a) Only those local governments and private entities that encourage, and formally commit to utilizing all received grant funds for the collection, reuse and recycling of household do-it-yourself used oil shall be eligible to apply for or receive a grant under this subchapter.

(b) Eligible local governments and private entities desiring to receive an assistance grant under this subchapter shall submit, within the time frames announced by the commission pursuant to §328.47 of this title (relating to Grant Announcement and Recipient Selection), formal project applications utilizing the forms and following the instructions and procedures provided by the commission for such purposes.

(c) Recipient selection for any grant or other assistance offered by the commission under this subchapter shall be solely based on the merit of the applications and their compliance with the criteria established by the advisory committee and set forth in the appropriate Request for Applications.

**§328.47. Grant Announcement and Recipient Selection.**

(a) The commission shall announce grant funds, select grant recipients, and award assistance grants under this subchapter utilizing a Request for Applications (RFA). Under the RFA process, the commission will:

(1) publish a formal notice in the *Texas Register* advising eligible applicants that the commission is accepting grant applications for household do-it-yourselfer used oil collection, reuse and recycling projects, and that the commission will make grant awards, on a first-come, first-served basis, to those entities whose applications and proposed projects meet certain RFA-specified minimum requirements;

(2) make available, upon request, application forms and instructions, together with the specific RFA document that sets forth the established minimum requirements and criteria for application acceptance and award of the grant;

(3) accept and process applications, on a first-come, first-served basis; and

(4) providing budgeted funds remain available, award grants to those local governments and/or private entities whose applications meet the minimum standards and criteria set forth in the RFA.

(b) All grant applications will be reviewed and processed by the commission's staff to ensure compliance with the requirements of this subchapter, the appropriate RFA, and applicable requirements of Health and Safety Code, Chapter 371. The applications shall also be reviewed and considered by the advisory committee whose statutory duties include recommending grant recipients to the commission based on the used oil collection needs of the state and/or by other public agencies or organizations who have specific responsibilities to review, comment on, or coordinate the selection and/or awarding of state grants.

(c) Applicants selected to receive used oil collection, reuse and recycling assistance grants, or other used oil recycling program support under this subchapter, may be required, depending on the specific RFA, to enter into a written contract with the commission as a condition to receiving a grant. The contracts will indicate the amount and type of grant, establish time frames and/or deadlines for completing grant-supported activities and for expending grant-provided funds, describe reporting requirements and payment procedures, and contain standard contract conditions.

**SUBCHAPTER F : MANAGEMENT OF USED OR SCRAP TIRES**

**§§328.51-328.71**

**STATUTORY AUTHORITY**

The new sections are 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. Additionally, Texas Health and Safety Code Section 361.112 provides the commission with the authority to adopt rules to regulate storage, transportation, and disposal of used or scrap tires.

The review of the commission's rules is proposed under Article IX, Section 167, General Appropriations Act, 75th Legislature, 1997.

The proposed sections implement Texas Health and Safety Code, §361.024 and §361.112.

**§328.51. 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.

**§328.52. Applicability.**

(a) This subchapter does not preempt local ordinances regarding the management of used or scrap tires that are as or more stringent than the regulations in this subchapter. All persons or facilities regulated by this subchapter must comply with all applicable local ordinances that are not inconsistent with the regulations in this subchapter. A local ordinance is not inconsistent with this subchapter if a regulated person or facility can simultaneously comply with both the state and local requirements.

(b) 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. This subchapter does not apply to whole used or scrap tires that are classified as industrial solid waste.

(c) All used or scrap tires or tire pieces, except for tires collected incidentally by municipal solid waste collection vehicles, are subject to manifesting by generators according to the requirements in §328.58 of this title (relating to Manifest System).

(d) 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.

**§328.53. 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.

(1) **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.

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

(3) **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.

(4) **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.

(5) **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.

(6) **Facility** - All contiguous land and structures, other appurtenances, and improvements on the land used for the storage or processing of scrap tires.

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

(8) **Generator** - An entity, except a scrap tire energy recovery facility and a scrap tire recycling facility, that is a fleet operator, is an automotive dismantler, or is a whole new or used tire retailer, wholesaler, manufacturer, recapper or retreader.

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

(10) **Land reclamation** - The filling, rehabilitating, improving and restoring of excavated and/or deteriorated and/or disturbed land for the purpose of restoring the land to its approximate natural grade and to prepare or reclaim the land for re-use.

(11) **Land reclamation projects using tires (LRPUT)** - A project to fill, rehabilitate, improve and/or restore already excavated, deteriorated or disturbed land, which uses no more than 50% by volume of tire pieces along with inert fill materials, for the purpose of restoring the land to its approximate natural grade and to prepare 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.

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

(13) **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.

(14) **Operator** - The person responsible for the overall operation of the facility.

(15) **Owner** - The person or company who owns the facility or part of a facility.

(16) **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.

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

(18) **Scrap tire** - A whole tire that can no longer be used for its original intended purpose. A whole used tire that can be used, reused or legally modified to be reused, for its original intended purpose is not a scrap tire.

(19) **Scrap tire facility** - A facility that processes, conducts energy recovery or recycles used or scrap tires or tire pieces.

(20) **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 more than 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 or a scrap tire facility that stores on-site no more than a 30 calendar day supply of used or scrap tires or tire pieces.

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

(22) **Tire monofill** - A below-ground depository, landfill or landfill trench consisting of greater than 50% by volume of tires or tire pieces.

(23) **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.

(24) **Tire processor** - A registered scrap tire facility where used or scrap tires or tire pieces are collected and shredded or baled for delivery to a scrap tire storage site, or to 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.

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

(26) **Trailer** - For the purposes of this chapter only, an enclosed, portable and lockable container for the storage of less than 2,000 used or scrap tires. This may include a trailer, railcar, roll-off container, or dumpster.

(27) **Transportation facility** - A facility such as a marine terminal, rail yard, or trucking facility where scrap tires or tire pieces may be stored for periods longer than 30 consecutive calendar days.

**§328.54. 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) Before disposal, whole 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 §328.61 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, except for those vehicles listed in §328.57 of this title (relating to Transporter Requirements), 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.

**§328.55. 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 §328.54 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 maintain financial assurance as required;
- (ix) dumping of used or scrap tires or tire pieces illegally;
- (x) collection, storage, transportation or processing of used or scrap tires or tire pieces without registration, as required in this section;
- (xi) failure to notify the executive director of any change in registration information as required in paragraph (4) of this section; or

(xii) failure to obtain and maintain necessary approvals or certifications from the Fire Marshal with jurisdiction over the facility location;

(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 under 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.

**§328.56. Generator Requirements.**

(a) Generator registration requirements include the following.

(1) Generators storing more than 500 tires shall obtain a registration number from the executive director. The generator must contact the executive director, identify the business as a generator, provide the business name, tax identification number, mailing address, physical location, and the city and county where the generator is located.

(2) The generator shall notify the executive director within 15 days, in writing, of any changes to the generator information.

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

(c) Each generator shall use manifests, work orders, invoices or other records to document the removal and management of all scrap tires generated on-site.

(d) 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 total 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 trailers.

(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 trailers shall be required to obtain a scrap tire storage registration pursuant to §328.55 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.

(5) Generators who store more than 500 used or scrap tires are exempt from the requirement to shred, split, or quarter the used or scrap tires provided that the tires are awaiting transport.

(e) 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 §328.58 of this title (relating to Manifest System) and record keeping requirements in §328.57 of this title (relating to Transporter Requirements).

**§328.57. Transporter Requirements.**

(a) Applicability. This section establishes 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 §328.58 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 or to a facility used by local or other governmental entities or agencies to collect used or scrap tires shall be exempt from registration under this section; however, each load of used or scrap tires shall be manifested in accordance with §328.58 of this title (relating to Manifest System).

(c) General requirements.

(1) Transporters shall register their operations with the executive director before conducting business, according to the registration procedures outlined in §328.55 of this title (relating to Registration Requirements).

(2) Transporters shall maintain records using a manifest system, as required in §328.58 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.

(4) Each transporter shall notify the generator of any changes to the manifest. A written notification must be received by the generator within two weeks of any changes.

(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 the item remains legible and readable. To the side of the 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 the 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 §328.54 of this title (relating to General Requirements).

**§328.58. 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, number of tires removed on the manifest, and registration number, if applicable. 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 name and registration number and the transporter's driver's license number and the state where the license was issued. The transporter shall record the number and type of scrap tires removed from the generator and delivered and the location of any whole used or scrap tires removed from the load and delivered. 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 the item remains legible and readable. To the side of the 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.

**§328.59. 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 more than 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in trailers 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 §328.55 of this title (relating to Registration Requirements).

(2) When a properly registered storage site begins operations, the owner 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 §328.58 of this title (relating to Manifest System).

(4) Owners and/or operators of scrap tire storage facilities shall obtain all required 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 Sites) 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.

**§328.60. 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 at a facility shall be required to obtain a scrap tire storage site registration for that facility from the executive director pursuant to §328.55 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, amended registration, or renewal 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) Upon filing a registration application, the applicant shall mail a copy of the application to the appropriate county judge and shall mail notice that an application has been filed to the appropriate regional council of government and the appropriate mayor if the proposed facility is to be located within the corporate limits or extraterritorial jurisdiction of a city. Proof of mailing shall be provided in the form of return receipts for registered mail.

(3) Upon filing a registration application, the facility owner or operator shall provide notice to the general public by means of a notice by publication and a notice by mail. Each notice shall

specify both the name, affiliation, address, and telephone number of the applicant and of the commission employee who may be reached to obtain more information about the application to register the site. The notices shall specify that the registration application has been provided to the county judge and that it is available for review by interested parties. The applicant shall publish notice in the county in which the facility is located, and in adjacent counties. Notice shall be published in a newspaper of general circulation. The published notice shall be published once a week for three weeks. The applicant should attempt to obtain publication in a Sunday edition of a newspaper. The notice by certified mail, return receipt requested, shall be sent to all adjacent landowners and all owners of property within 500 feet of the boundary of the facility; the health authorities of the city and county in which the facility will be located, if applicable; and the appropriate state senator and representative for the area encompassing the facility.

(4) Applications shall be submitted in triplicate.

(5) 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.

(6) 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.

(7) 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.

(8) 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 compliance with the application, applicable local and state regulations, and any special provisions that may be imposed by the executive director.

(9) 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 ½-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.

(10) 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 §328.61 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 which 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 §328.71 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.

(11) The applicant seeking registration or amended registration for a scrap tire storage site shall submit evidence of financial responsibility in conformance with §328.71 of this title (relating to Closure Cost Estimation for Financial Assurance).

(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. 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.

**§328.61. 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. Existing storage sites with variances to the 8,000 square foot pile size limit may maintain the approved pile size if approved in writing by the local fire marshal in the fire plan under the current registration. Approval from the

executive director and the local fire marshal will be required to maintain existing pile sizes greater than 8,000 square feet with renewal or amended application requests.

(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. Storage sites registered before January 1, 1998 may maintain setbacks less than 40 feet under the current registration if approved in writing by the local fire marshal in the fire plan.

(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. Storage sites registered before January 1, 1998 may maintain setbacks less than 40 feet under the current registration if approved in writing by the local fire marshal in the fire plan.

(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 applicable local codes.

**§328.62. 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. The 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 requirements in §328.58 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 those criteria to satisfy the commission's requirements.

**§328.63. Scrap Tire Facility Requirements.**

(a) Applicability. This section applies to owners or operators of facilities that process, conduct energy recovery or recycle used or scrap tires or tire pieces.

(b) Storage site registration requirement. The applicant shall obtain a scrap tire storage site registration in accordance with §328.60 of this title (relating to Scrap Tire Storage Site Registration) if the applicant seeking registration for a scrap tire facility:

(1) intends to have more than a 30 calendar day supply of tires at the facility site; or

(2) is solely a scrap tire processing facility with no recycling or energy recovery conducted on-site and 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 trailers.

(c) Scrap tire facility registration requirements. Scrap tire facilities shall register their operation with the executive director in accordance with §328.55 of this title (relating to Registration Requirements) before 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 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 §328.60 of this title (relating to Scrap Tire Storage Site Registration);

(B) the maximum amount of tires (in pounds) that will be on the scrap tire 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 §328.60 of this title (relating to Scrap Tire Storage Site Registration); 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 before submitting 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 those 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.

**§328.64. 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 in §328.55 of this title (relating to Registration Requirements).

**§328.65. 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 that activity is authorized by a permit from the commission. No person may begin 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.

**§328.66. 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 applicable requirements of this subchapter. 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) The method of placement and commingling of the tire shreds to achieve a mix of tire pieces with the inert fill material in a proportion no greater than 50% of tire material by volume.

(6) 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 LRPOT is designed in a manner that will comply the following standards.

(A) The LRPOT 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 LRPOT 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 in a manner that constitutes disposal as defined in Texas Health and Safety Code §361.003(7);

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

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

(B) the LRPOT 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.

(8) An affidavit signed by the operator shall be submitted certifying that he or she is familiar with the application and all supporting data; is aware of all commitments represented in the notification; is familiar with all pertinent requirements in these regulations; and agrees to develop and operate the project in accordance with the application, applicable local and state regulations, and any special provisions that may be imposed by the executive director.

(9) The owner or operator shall mail a copy of the notification documents and attachments to the appropriate mayor and county judge if the proposed project is to be located within the corporate limits or extraterritorial jurisdiction of a city; or the appropriate county judge if the proposed project is to be located within an unincorporated area of a county; and the appropriate regional council of government. Proof of mailing shall be provided in the form of return receipts for registered mail.

(10) Upon the filing of the notification documents, the facility owner or operator shall provide notice to the general public by means of a notice by publication and a notice by mail. Each notice shall specify both the name, affiliation, address, and telephone number of the applicant and of the commission employee who may be reached to obtain more information about the LRPOT project. The notices shall specify that the notification documents have been provided to the county judge and that they are available for review by interested parties. The applicant shall publish notice in the county in which the facility is located, and in adjacent counties. The notice shall be published once a week for three weeks. The applicant should attempt to obtain publication in a Sunday edition of a newspaper. The notice by certified mail, return receipt requested, shall be sent to all adjacent landowners and all

owners of property within 500 feet of the boundary of the project; the health authorities of the city and county in which the project will be located, if applicable; and the appropriate state senator and representative for the area encompassing the project.

(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 LRPOT must have existed before the project, and it must have been excavated or soil removed for a purpose other than for the burial of tire pieces.

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

(d) The owner or 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 and operator of the LRPOT shall comply with all applicable local ordinances, including any public safety, or zoning and land use laws.

(g) Shredded, split or quartered tires placed below ground shall be mixed in a proportion no greater than approximately 50% by volume with inert material acceptable for filling land. If greater

than 50% of tire pieces by volume are placed below ground, the site is considered a tire monofill and is subject to §328.65 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 or operator of the LRPOT shall register as a scrap tire facility if a shredding operation is conducted on site for processing tires.

(j) The owner or operator of the LRPOT shall register as a scrap tire storage site under §328.60 of this title (relating to Scrap Tire Storage Site Registration) 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 more than 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 §328.60 of this title (relating to Scrap Tire Storage Site Registration); and

(2) the construction of 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 LRPUT is issued. This identifying number shall be referenced in any correspondence relating to a particular LRPUT for which such a number is issued.

(l) A person may provide the commission with written comments on any notification of a LRPUT project. The executive director shall review any written comments when they are received within 30 days of mailing the notice. The written information received will be utilized by the executive director in determining what action to take on the application for a LRPUT.

(m) Following completion of all fill activities for the LRPUT, the owner or operator shall submit to the executive director, for review and approval, a documented certification signed by a registered professional engineer verifying that the project has been completed in accordance with this subchapter, the notification documents, and all attachments. Once approved, this certification shall be placed in the file.

**§328.67. Special Authorization Priority Enforcement List (SAPEL).**

(a) SAPEL.

(1) General. The SAPEL consists of scrap tires generated in specially designated counties or regions that are identified by the executive director as areas which are not receiving adequate collection service and that 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 §328.68 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.

**§328.68. 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 (Chapter 2151, Texas Government Code) 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, of piles of scrap tires or tire pieces in excess of 500 and defined as illegal scrap tire sites identified before December 31, 1997 and classified by the executive director. This list shall be used by the executive director for awarding site cleanups 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 to inspect, investigate or remediate 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 §328.55 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.

**§328.69. 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 before beginning operation. Notice shall be published in a newspaper of general circulation. 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 before beginning 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.

**§328.70. Motion for Reconsideration.**

A person affected 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).

**§328.71. 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.

## **SUBCHAPTER G : NEWSPRINT RECYCLING**

### **§§328.100-328.105**

#### **STATUTORY AUTHORITY**

The new sections are 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. Additionally, Texas Health and Safety Code Section 361.430 provides the commission with the authority to adopt rules to establish a newsprint recycling program for the state.

The review of the commission's rules is proposed under Article IX, Section 167, General Appropriations Act, 75th Legislature, 1997.

The proposed sections implement Texas Health and Safety Code, §361.024 and §361.430.

#### **§328.100. Purpose and Definitions.**

(a) Purpose. These sections set forth newsprint recycling requirements for newsprint manufacturers and newspaper publishers. The sections contain recordkeeping and reporting procedures

with respect to the utilization of recycled-content newsprint in newspaper publishing operations. These sections are applicable to every newspaper printing and publishing operation in this state that publishes, sells, or distributes newspapers, as well as to those manufacturers and suppliers who provide newsprint for sale in Texas.

(b) **Definitions.** The following words, terms and abbreviations, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Aggregate postconsumer recycled content** - refers to the total amount of postconsumer recovered material by weight contained in total purchases of newsprint for a specified period. It is arrived at by multiplying the percentage of postconsumer recovered fiber in each shipment of newsprint purchased by the percentage of total newsprint purchases that shipment represents and summing the products thus calculated for all shipments received during the specified time period.

(2) **Commission** - The Texas Natural Resource Conservation Commission.

(3) **De-inked fiber** - A fiber which has undergone the de-inking process.

(4) **De-inking process** - A process by which most of the ink, filler, coating, and other extraneous (non-cellulose) material is removed from printed or unprinted paper.

(5) **Metric ton** - 1,000 kilograms. To convert pounds to metric tons the number of pounds should be divided by 2,204.6.

(6) **Newspaper** - A publication that is printed on newsprint and published, sold, and distributed in the state, both daily and non-daily, to disseminate current news and information of general interest to the public.

(7) **Newspaper publisher** - An individual or corporate group of newspaper publishers which uses newsprint in a newspaper publishing operation.

(8) **Newsprint** - Paper used for the printing of newspapers.

(9) **Newsprint manufacturer** - A business which makes newsprint.

(10) **Overs** - also known as "overruns," are newspapers printed for sale to distributors or the public which remain unsold. Overs include inserts such as magazines and advertising supplements.

(11) **Postconsumer recovered material** - Includes paper, paperboard, and other fibrous products that have completed their normal cycle of production and use, but excludes all papermaking waste and blank white news, which is diverted for recycling prior to printing. Postconsumer recovered material may also include any de-inked fiber, regardless of the source of such

fiber except from sources specifically excluded previously. Overs are included within the definition of postconsumer recovered material.

(12) **Postconsumer recycled content** - That portion of manufactured newsprint that is comprised of postconsumer recovered material, usually expressed as a percentage of the total content.

(13) **Recycled newsprint** - Any newsprint certified by the manufacturer or supplier as containing at least 25% postconsumer recovered material, by fiber weight.

(14) **Virgin newsprint** - Newsprint which contains 100 percent new materials in its formation.

#### **§328.101. General Guidelines and Requirements.**

(a) Target recycling percentages. In order to bring about a significant state-wide increase in newsprint recycling, newspaper publishers are encouraged to take whatever measures may be necessary to ensure that their publishing businesses meet or exceed the target recycling percentages set forth in paragraph (1) of this subsection. In the event a newspaper publisher chooses to purchase newsprint with less than 25% postconsumer recycled content, the commission will consider legislative intent to be achieved if that publisher meets or exceeds the alternative aggregate recycling content standards set forth in paragraph (2) of this subsection.

(1) Newspaper publishers should obtain and utilize newsprint such that the percentage of "recycled newsprint," as defined in §328.100 of this title (relating to Purpose and Definitions), in the overall total amount of newsprint purchased each year is at least:

(A) 10 percent by the end of calendar year 1993;

(B) 20 percent by the end of calendar year 1997; and

(C) 30 percent by the end of calendar year 2000.

(2) In the alternative, newspaper publishers may obtain and utilize newsprint such that the aggregate postconsumer recycled content, by fiber weight, in the overall total amount of newsprint purchased each year is at least:

(A) 2.5 percent by the end of calendar year 1993;

(B) 12 percent by the end of calendar year 1997; and

(C) 18 percent by the end of calendar year 2000.

(b) Certification. Newsprint manufacturers and suppliers shall certify the average percentage, based on annual production, of postconsumer recovered material contained in any newsprint sold and/or delivered to Texas newspaper publishers.

(c) Recordkeeping. Newsprint purchase and delivery records shall be maintained by all newspaper publishers. In addition, mill certification records showing the average percentage of postconsumer recovered material in purchased and/or utilized newsprint should be kept by each publisher. Such records must contain sufficient information to enable the publisher to prepare those reports required under §328.103 of this title (relating to Reports). An official Texas Daily Newspaper Association (TDNA) Newsprint Order Form may be used to maintain and verify required records. Newspaper publishers shall retain required records for three years.

(d) Notice of postconsumer content and labeling.

(1) Newsprint manufacturers or suppliers shall indicate, on invoices provided to newspaper publishers, suppliers, or commercial printers, or through another form of written notice to such consumers, the average postconsumer recycled content of each roll of newsprint which is the subject of such invoice or notice, and the amount of newsprint purchased from such newsprint manufacturer or supplier containing the minimum postconsumer recycled content required to meet the definition of "recycled newsprint" under §328.100 of this title (relating to Purpose and Definitions).

(2) Newsprint which contains less than the minimum percentage of postconsumer recovered material required to qualify it as recycled newsprint may be identified as follows: "this product contains an average of \_\_\_\_% postconsumer recycled fiber, based on annual production" with the percentage indicated.

(e) Comparable price, quality, and availability. Texas newspaper publishers are urged to voluntarily increase utilization of "recycled newsprint" or other newsprint, that has been certified as containing postconsumer recovered material, beyond the target recycling percentages set forth in subsection (a) of this section in those instances where:

(1) availability of such products exist;

(2) the net cost of utilizing such products is comparable to that of utilizing virgin newsprint; and

(3) the quality of such products (considering such factors as brightness, opacity, and cross machine tear strength) is similar to that of virgin newsprint.

**§328.102. Requirements.**

The commission shall assure easy access of information among all parties affected by these sections and shall establish a data filing system that will allow all parties to easily monitor the progress of the recycling program set forth in these sections. Specifically, the commission shall:

(1) maintain up-to-date listings of, and data from, municipalities, towns, local organizations, and other generators of recyclable paper and newsprint, concerning both present and planned newsprint recycling and collection activities and the overall availability of such recyclable material within the state;

(2) provide, to recyclers of old newspapers and other recyclable paper materials, acceptability requirements and specifications with respect to materials destined for de-inking plants and recycled paper mills;

(3) maintain a roster of current newspaper publishers, wastepaper dealers, commercial printers, as well as paper and paperboard mills who buy, sell, recover or consume wastepaper in Texas and in other states;

(4) in cooperation with various state agencies and officials, publishers, and other parties, assist in the development of those education strategies and market development programs

described in §361.423 of the Health and Safety Code, which are designed to promote newsprint recycling; and

(5) work closely with Texas Daily Newspaper Association, the Texas Press Association, manufacturers of newsprint containing postconsumer recovered material, and citizen groups concerned with recycling, to monitor problems and issues regarding newsprint quality and the availability of "recycled newsprint."

**§328.103. Reports.**

(a) Preprinted reports. Newspaper publishers may use standard forms, to be provided by the commission, to submit annual reports required by this section, concerning the publishers' use of recycled newsprint.

(b) Due date. Texas newspaper publishers shall be responsible for returning a completed report to the commission on or before January 31 of each year for the immediately preceding calendar year.

(c) Report content. The report shall contain the following information:

(1) name, mailing address, physical address, and telephone number of the newspaper manufacturer or supplier or corporate media group from which newsprint purchases were made during the preceding calendar year;

(2) the total amount of newsprint purchased during the calendar year (in metric tons);

(3) the total amount of "recycled newsprint," as defined in §328.100 of this title (relating to Purpose and Definitions), purchased during the calendar year (in metric tons);

(4) the percentage, of the total newsprint purchased during the calendar year, which in accordance with §328.100 qualified as "recycled newsprint;"

(5) if the reporting party chooses to comply with the alternative target recycling percentages in §328.101 (relating to General Guidelines and Requirements), the percentage reflecting the aggregate postconsumer recycled content of the total amount of newsprint purchased during the calendar year; and

(6) in the event the publisher fails during the preceding year to meet the voluntary requirements set forth in §328.101 of this title (relating to General Guidelines and Requirements), the publisher shall indicate the following:

(A) whether or not the publisher was able to obtain sufficient quantities of "recycled newsprint," or other newsprint containing certified minimum percentages of postconsumer recovered material, on a timely basis, at roughly the same net cost, and having satisfactory quality;

(B) whether or not the publisher attempted to obtain "recycled newsprint," or other newsprint containing certified minimum percentages of postconsumer recovered material, from every manufacturer or supplier that offered to sell such newsprint to the publisher; and

(C) such publisher's specific efforts to obtain "recycled newsprint," including the name and address of each producer of newsprint that the publisher contacted, as well as the name and telephone number of the contact person representing each of those producers.

(7) Annual reports shall be submitted to the agency address identified on the annual report.

**§328.104. Joint Review.**

The commission shall schedule periodic meetings with representatives from the newsprint manufacturing and newspaper publishing industries to evaluate the effectiveness of the requirements set forth in these sections, to compare the newspaper recycling progress in Texas with that in other states, and to consider whether revisions to these sections may be warranted.

**§328.105. Enforcement.**

If the commission finds that, on a state-wide basis, voluntary actions alone on the part of newsprint manufacturers, newsprint suppliers, and newspaper publishers fail to achieve the target recycling percentages set forth in §328.101 of this title (relating to General Guidelines and Requirements), the commission may, after considering all relevant factors, including but not limited to function, availability and cost, adopt mandatory enforcement measures designed to further increase the amount of newsprint recycling in the state and to ensure that the state-wide goals are achieved.

Figure: 30 TAC §328.9(a)

Recycling Rate

{Note: the brackets are part of a mathematical equation and are not meant to be deleted}

$$RR = \left[ \frac{R}{R + D + E} \right] \times 100$$

where

RR is the recycling rate (in percent);

R is the tons of material recovered or diverted for recycling from the total municipal solid waste stream of the report area during the report period;

D is the tons of total municipal solid waste incinerated, landfilled, or otherwise disposed of in the report area during the report period; and

E is the net tons of total municipal solid waste exported during the report period; that is, the tons exported from the report area minus the tons imported into the report area.

Figure: 30 TAC §328.9(b)

Waste Stream Reduction Rate

{Note: the brackets are part of a mathematical equation and are not meant to be deleted}

$$WR = \left[ \frac{R + SR}{R + SR + E} \right] \times 100$$

where

WR is the waste stream reduction rate (in percent); and

SR is the tons of total municipal solid waste source-reduced during the report year as determined by the following formula:

$$SR = \left[ (R90 + D90 + E90) \left( \frac{POP}{POP90} \right) \right] - (R + D + E)$$

where

R90 is the tons of material recovered or diverted for recycling from the total municipal solid waste stream of the report area during the base year, 1990;

D90 is the tons of total municipal solid waste incinerated, landfilled, or otherwise disposed of in the report area during the base year, 1990;

E90 is the net tons of total municipal solid waste exported during the base year, 1990; that is, the tons exported from the report area minus the tons imported into the report area;

POP is the average population of the report area during the report year; and

POP90 is the average population of the report area during the base year, 1990.

Figure: 30 TAC §328.9(c)(1)

Per Capita Annual Waste Generation Rate

{Note: the brackets are part of a mathematical equation and are not meant to be deleted}

$$AG = \frac{R + D + E}{POP}$$

where

AG is the per capita annual waste generation rate.

Figure: 30 TAC §328.9(c)(2)

Per Capita Daily Waste Generation Rate

{Note: the brackets are part of a mathematical equation and are not meant to be deleted}

$$DG = \frac{AG}{365}$$

where

DG is the per capita daily waste generation rate.