The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§330.7, 330.671, 330.673, and 330.675.

Background and Summary of the Factual Basis for the Proposed Rules

The commission is proposing this rulemaking to amend existing rules pertaining to a permit by rule (PBR) authorization for small counties or municipalities disposing of demolition waste from nuisance or abandoned buildings. The commission also proposes amendments to the existing rules pertaining to the waste disposal fees at municipal solid waste (MSW) disposal facilities, such as landfills and incinerators, and to the waste disposal fee exemption/credit for material diverted from disposal and processed into compost or mulch.

Senate Bill (SB) 819, 83rd Legislature, 2013, effective June 14, 2013, revised the Texas Health and Safety Code (THSC), §361.126. This section allows the commission to issue a PBR for a county or municipality, with a population of 12,000 people or less, to dispose of demolition waste from properties controlled by the county or municipality with nuisance or abandoned buildings. The population limit was increased from 10,000 to 12,000 people.

House Bill (HB) 7, 83rd Legislature, 2013, effective June 14, 2013, revised the THSC, §361.013. This statute requires MSW disposal facilities to submit reports on the amount

of solid waste brought into the facility and allows the commission to collect fees on the amount of solid waste disposed of at the facility. The solid waste disposal fee is often referred to as the tipping fee. For disposal of waste by landfilling, the fee is reduced by 25%, from $1.25 to $0.94 per ton of solid waste, from $0.40 to $0.30 per cubic yard of compacted solid waste, and from $0.25 to $0.19 per cubic yard of uncompacted solid waste. For disposal of waste by methods other than landfilling -- incineration, land application, composting, etc. -- the fee is reduced by 25%, from $0.62 and one-half cent to $0.47 per ton of solid waste, from $0.20 to $0.15 per cubic yard of compacted solid waste, and from $0.12 and one-half cent to $0.09 and one-half cent per cubic yard of uncompacted solid waste.

HB 7 also revises the allocation percentage of the tipping fee revenue received by the commission. Revenue received by the commission shall be deposited in the state treasury to credit the commission. Of that revenue, 66.7% shall be dedicated to the commission's Waste Management Account 0549 and the remaining 33.3% to the commission's Solid Waste Disposal Fee Account 5000. The previous allocation percentage was a 50%/50% split between the two accounts.

HB 7 revises THSC, §361.013 to expand the tipping fee exemption - from exemption of source-separated yard waste to exemption of source-separated material. Additionally,

material processed into compost or mulch may receive a fee credit. Previously, only material processed into compost could receive the credit.

Section by Section Discussion

§330.7, Permit Required

The commission proposes to amend §330.7(i), which would authorize a county or municipality with 12,000 people or less, located in an arid-exempt area, to dispose of demolition waste from nuisance and abandoned buildings under a PBR.

The nuisance and abandoned building must have been acquired by the county or municipality by means of bankruptcy, tax delinquency, or condemnation. Disposal of the demolition waste must occur on property that is owned or controlled by the county or municipality. The disposal property must qualify for an arid exemption with less than or equal to 25 inches of average annual precipitation based on data from the nearest official precipitation recording station for the most recent 30-year period or on another method approved by the executive director. To be authorized to dispose of the solid waste under this PBR, the county or municipality must adhere to the conditions set forth in §330.7(i)(1) and (2).

The population limit was increased from 10,000 people to 12,000 people. This allows additional counties and municipalities a less costly, environmentally secure means of

disposing of waste from nuisance and abandoned buildings. The PBR was adopted in 2012 to address a short-term issue facing small West Texas communities. This proposed amendment does not extend the five-year term of the PBR.

§330.671, Purpose and Applicability

The commission proposes to amend §330.671(b)(1), relating to the tipping fee exemption or credit on material that is processed into compost or mulch. The amendment replaces "source-separated yard waste composted at a composting facility, including a composting facility located at a permitted landfill..." with "source-separated material processed at a composting or mulch processing facility, including a composting or mulch processing facility located at a permitted landfill...." The amendment removes the language defining "source-separated yard waste". The amendment replaces "...and converted to compost product for composting through a composting process" to "...and processed to compost or mulch product at the facility." The amendment replaces "any compost product for composting that is not used as compost and is deposited in a landfill..." with "any compost or mulch product that is produced at a composting or mulch processing facility that is used in the operation of the facility or is disposed of in a landfill...."

Facilities that divert source-separated material to composting or mulching facilities are exempt from the tipping fee based on the amount of material diverted. Previously, the

language only authorized the exemption for the diversion of source-separated yard waste processed into compost. These revisions allow a wider variety of source-separated material to be exempted from tipping fees. Yard waste and brush continue to qualify for the fee exemption when diverted. Clean wood material can now qualify for this exemption. Clean wood material is considered wood or wood materials, including roots, or vegetation with intact rootballs, sawdust, pallets, and manufacturing rejects. Clean wood material does not include wood that has been treated, coated or painted by materials such as, but not limited to, paints, varnishes, wood preservatives, or other chemical products. Clean wood material also does not include demolition material, where the material is contaminated by materials such as, but not limited to, paint or other chemicals, glass, electrical wiring, metal and Sheetrock. The definition of source-separated yard waste was removed from the rule to reduce the limitations on the type of material diverted.

Facilities that divert non source-separated material from the landfill and process the material into compost or mulch, can be credited half of the tipping fee when the facility demonstrates to the commission that the material has been processed for beneficial use. In order to qualify for the tipping fee credit, the processed material cannot be disposed of in a landfill, used in the operation of the landfill, or be used as daily cover. If the material is used in such a way, the facility will not receive the credit. Additionally, the

material received must be processed into compost or mulch at the landfill facility to qualify for the fee credit.

Including mulch processing with composting for both the fee exemption and fee credit allows disposal facilities greater flexibility in diverting material away from landfills. Although not defined in this chapter, mulch is defined in §332.2(33), as ground, course, woody yard trimmings, and clean wood material. Mulch is normally used around plants and trees to retain moisture and suppress weed growth, and is intended for use on top of soil or other growing media rather than being incorporated into the soil or growing media. Mulch does not include wood that has been systemically killed using herbicides.

§330.673, Fees

The commission proposes to amend §330.673, relating to the fee, collected by the commission, on solid waste disposed of at a MSW disposal facility. The fee rate for solid waste disposed of by landfilling is reduced from $1.25 to $0.94 per ton, from $0.40 to $0.30 per compacted cubic yard, and from $0.25 to $0.19 per uncompacted cubic yard. If the landfill operator calculates the amount of waste received based upon the population equivalent method, the fee is reduced from $1.25 to $0.94 per ton.

For MSW facilities that dispose of solid waste by means other than landfilling, the fee collected by the commission is reduced from $0.62 and one-half cent to $0.47 per ton,

from $0.20 to $0.15 per compacted cubic yard, and from $0.12 and one-half cent to $0.09 and one-half cent per uncompacted cubic yard. If the facility operator calculates the amount of waste received based upon the population equivalent method, the fee is reduced from $0.62 and one-half cent to $0.47 per ton.

These changes will reduce the overall amount of fees collected. However, due to current allocations and the increase in distribution into Fund 0549 from 50% to 66.7%, appropriations from these funds for the '14-'15 biennium will be funded.

§330.675, Reports

The commission proposes to amend §330.675, relating to the reports submitted to the commission by MSW disposal facilities on the amount of solid wasted diverted and disposed of. The amendment replaces "yard waste converted" with "material processed" and replaces "to compost or product for composting" with "to compost or mulch product." These changes are made to coincide with the amendments made in §330.671. The changes in §330.671, are made to provide a fee exemption or credit for a greater variety of materials that are diverted. The changes to the report forms are needed to ensure the correct amount of diverted material is reported to the commission.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rules are in effect, fiscal implications which may be significant, are anticipated for the agency and for units of local government that own or operate solid waste disposal facilities or who have nuisance or abandoned buildings, but not for other units of state or local government as a result of the administration or enforcement of the proposed rules.

The proposed rules would: 1) Provide a PBR authorization for small counties or municipalities disposing of demolition waste from nuisance or abandoned buildings; 2) Reduce by 25% waste disposal fees assessed to MSW disposal facilities; and, 3) Provide waste disposal fee exemptions or credits for material diverted from landfills and processed into compost or mulch.

Tipping Fee Reduction

The proposed rules implement provisions in HB 7, 83rd Legislature, 2013. HB 7 reduced the solid waste disposal fee, commonly known as the tipping fee, by 25%. For waste disposed at an MSW landfill, the fee is reduced from $1.25 to $0.94 per ton, from $0.40 to $0.30 per compacted cubic yard, and from $0.25 to $0.19 per uncompacted cubic yard.

HB 7 also changed the distribution of tipping fee revenue, as it is deposited into two agency accounts, the Waste Management Account 0549 and the Municipal Solid Waste Disposal Account 5000. HB 7 requires that 66.7% of the revenue collected by the commission be dedicated to Account 0549 and the remaining 33.3% be dedicated to Account 5000. Previously, the fee revenue distribution was split evenly between the two accounts at 50%. Account 5000 is projected to experience a decrease in revenue in an amount estimated to be $8.5 million each year for the five-year period covered by this fiscal note due to the reallocation of revenue. The net effect to the revenue deposited to Account 0549 is not expected to be significant even though revenue to Account 0549 is increased by 16.7%, because the total fee revenue collected is decreased by 25%, and 66% of the 25% reduction (the portion of the reduction allocated to Account 0549) is approximately 16.5%.

Funding in Account 5000 is dedicated to local and regional solid waste projects consistent with regional plans approved by the commission in accordance with THSC, Chapter 361. The current fund balance in Account 5000 in combination with the revenue stream under the proposed rules is projected to be sufficient to fund local and regional solid waste projects at current levels for the five-year period covered by this fiscal note and into the foreseeable future.

There are 120 landfills and 77 processing facilities owned or operated by local governments that would be impacted by the proposed rules. These local governments are anticipated to realize a decrease in tipping fees paid to the state. They may be able to pass these savings on to their customers who use the landfills. It is not known how many local government facilities would choose to decrease fees assessed to their customers. Conversely, local governments that dispose of waste at privately owned facilities may see a reduction in the fees they pay to the privately owned facilities if the owner or operator chooses to reduce fees based upon the 25% reduction in the tipping fee that is paid to TCEQ.

Mulch Processing

The proposed rules also implement HB 7 provisions that apply to source-separated materials. The proposed rules would provide that any source-separated material (not only yard waste material) is exempt from the tipping fee if the material is diverted from the disposal facility and processed into compost or mulch. In addition, disposal facilities that divert non-source-separated material and process the material into compost or mulch may receive a credit on their tipping fee. Previously, the language only allowed a credit on material diverted to compost.

These changes allow a greater variety of material to be diverted away from a landfill and processed for beneficial use. Staff does not expect an impact to agency tipping fee

revenue from the mulch processing revisions. Many facilities that divert material already process the material into compost or mulch and the agency has already been allowing facilities to divert material into compost or mulch as this allows more material to be diverted away from a landfill. Diverting material results in additional landfill space, which extends the life of the landfill. Therefore, the agency does not expect facilities to start diverting material or increase the amount diverted based solely on this rule change. There are many factors including equipment costs, land availability, transportation costs, and sales market for finished compost or mulch products that an entity must consider before diverting material.

Based on data collected for the annual MSW report entitled, "Municipal Solid Waste in Texas: A Year in Review, 2012 Data Summary and Analysis" (AS-187-13), there are 195 active landfills and 198 active processing facilities. Of those, 87 landfills and 58 processing facilities diverted 789,669 tons of material for beneficial use.

Permit By Rule

The proposed rules also implement provisions in SB 819, 83rd Legislature, 2013, that increase the population limit for counties or municipalities that can be authorized by a PBR to dispose of demolition waste from abandoned or nuisance buildings. The bill increased the population limit from 10,000 people to 12,000 people. Increasing the population limit allows additional small West Texas communities an environmentally

secure means of disposing of waste from abandoned buildings and other structures deemed to be a health or safety hazard. The bill allows counties or municipalities to dispose of demolition waste from a building, if the disposal occurs on land that the county or municipality owns or controls, and the landfill would qualify for an arid exemption under TCEQ rules.

No significant fiscal implications are anticipated for the agency, but some counties or municipalities may experience cost savings as a result of the implementation of the proposed rules. The commission does not expect the PBR to affect the amount of revenue it receives in Waste Management Account 0549. Current tipping fees and transportation costs for disposal of nuisance or abandoned buildings can be unaffordable for municipalities and counties in the area of the state affected by the proposed rules, therefore tipping fees collected from these local governments for disposal of this type of demolition waste has been minimal. Since the proposed rule do not require a tipping fee for disposal or an application fee for the new PBR, there is no anticipated impact to agency revenue. Cost savings are anticipated for counties or municipalities who dispose of nuisance or abandoned buildings under the proposed rules. These cost savings would vary considerably and agency staff is currently unable to provide an estimate of these savings.

While there are costs to counties or municipalities for implementing the PBR, such as excavation and access control costs at the disposal location, these are voluntary costs that are expected to be less than the costs of transporting the waste to an authorized disposal facility and paying the associated tipping fees at the facility.

When the original PBR for counties of 10,000 in population was implemented, six municipalities were authorized and one municipality is pending authorization. The increase in the population limit from 10,000 to 12,000 people will likely allow an additional six counties and six municipalities to apply for the PBR, if they so choose. The increase of 12 entities was estimated from the most recent census data.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliant with state law, more efficient use of state funds, and a more cost effective means of disposal for certain wastes.

The proposed rules are expected to result in cost savings for owners or operators of landfills and waste processing facilities. There are 75 landfills and 121 processing facilities that are privately owned or operated that would be impacted by the proposed rules. The amount of any cost savings would be highly variable for each owner or

operator and agency staff is not currently able to quantify the savings. If owners or operators of landfills choose to pass the cost savings on to their customers, individuals may experience a decrease in fees they pay for waste disposal.

Tipping Fee

The proposed 25% reduction in the tipping fee that is paid to the agency is expected to result in lower costs for operators of disposal facilities. The tipping fee reduction has the potential to also lower costs for customers of the disposal facility (individuals, businesses, others disposing of waste) if the owners choose to pass the cost savings on to the consumers. However, it is unknown how many operators will choose to reduce the fees charged to waste disposal customers.

Mulch Processing

The proposed rules will allow facilities that process diverted material into compost or mulch to receive either an exemption from the tipping fee or a credit. The agency currently allows facilities to divert and process material (source-separated yard waste or non-source-separated material) into compost or mulch. The proposed rules would allow a standard practice already in place in many landfills to be codified into agency rules. Facilities that begin to divert material for compost or mulch will incur a cost, such as purchasing equipment, but these costs are voluntary. Providing incentives for landfills to divert material away from the landfill extends the life of the landfill.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed rules will allow facilities that process diverted material into mulch or compost to receive either an exemption or credit on the tipping fee. These proposed rules are voluntary and do not impose new requirements on regulated entities. The proposed rules also reduce by 25% the tipping fee that landfill owners and operators collect and pay to the agency. This fee reduction is expected to result in lower costs for owners and operators of waste disposal facilities.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required, because the proposed rules do not adversely affect small or micro-businesses for the first five-year period the proposed rules are in effect and are required by state law.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required, because the proposed rules do not

adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rules do not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking is intended to implement amendments to statutory provisions. The authority to issue a PBR for a county or municipality with a population of 10,000 people or less, to dispose of demolition waste from properties controlled by the county or municipality with nuisance or abandoned buildings, is increased to allow this authorization for populations of 12,000 or less. The fee due to the state from landfill operators for the amount of solid waste disposed at landfills is reduced by 25%. A provision is added to require the commission to issue biennial reports on how that fee money is spent. The existing exemption from these fees for composting source-separated yard waste is expanded to exempt composting or mulching source-separated material. The proposal does not meet the definition of

"major environmental rule" because the rulemaking action is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Furthermore, the proposal does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rules do not meet any of these applicability requirements: there are no corresponding standards set by federal law and the proposals are either allowed or required by state law; the proposed amendments does not exceed an express requirement of state law; the rules do not exceed an express requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and, the commission does not propose the rules solely under the general powers of the agency, but rather under the authority of THSC, §361.011, which establishes the commission's jurisdiction over all

aspects of the management of MSW; THSC, §361.024, which provides the commission with rulemaking authority; THSC, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and, THSC, §361.013 and §361.014, which require the commission to charge fees and report on how the fees are spent. Therefore, the commission does not propose the adoption of the rules solely under the commission's general powers.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The specific intent of the proposed amendments are to reduce fees the state charges landfills and to require the commission to report how fees are spent. The amendments do not impose a burden on a recognized real property interest and therefore do not constitute a taking. The promulgation of the proposed rulemaking is neither a statutory nor a constitutional taking of private real property by the commission. Specifically, the proposed rulemaking does not affect a landowner's rights

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

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program (CMP), and will, therefore, require that goals and policies of the Texas Coastal Management Program be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the §§330.671, 330.673, 330.675 amendments are consistent with CMP goals and policies because the rulemaking is a fee rule, which is a procedural mechanism for paying for commission programs; will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and

enforcement of the amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies.

The commission determined that the amendment in §330.7 will not affect any coastal natural resource areas because the rules only affect counties outside the CMP area and is, therefore, consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on February 18, 2014, at 2:00 PM in Bldg. E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Ms. Sandy Wong, Office of Legal Services at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Mr. Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-050-330-WS. The comment period closes March 3, 2014. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html*. For further information, please contact Ms. Charlyne Fritz, Waste Permits Division, (512) 239-2331.

SUBCHAPTER A: GENERAL INFORMATION

§330.7

Statutory Authority

The amendment is proposed under the authority of: Texas Health and Safety Code (THSC), §361.011, Commission's Jurisdiction: Municipal Solid Waste, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste; THSC, §361.024, Rules and Standards, which provides the commission with rulemaking authority; THSC, §361.061, Permits: Solid Waste Facility, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and, THSC, §361.126, Disposal of Demolition Waste from Abandoned or Nuisance Building.

The proposed amendment implements THSC, §361.061 and §361.126.

§330.7. Permit Required.

(a) Except as provided in §§330.9, 330.11, 330.13, or 330.25 of this title (relating to Registration Required; Notification Required; Waste Management Activities Exempt from Permitting, Registration, or Notification; and Relationship with County Licensing System), no person may cause, suffer, allow, or permit any activity of storage,

processing, removal, or disposal of any solid waste unless such activity is authorized by a permit or other authorization from the commission. In the event this requirement is violated, the executive director may seek recourse against not only the person that stored, processed, or disposed of the waste but also against the generator, transporter, owner or operator, or other person who caused, suffered, allowed, or permitted its waste to be stored, processed, or disposed. No person may commence physical construction of a new municipal solid waste (MSW) management facility, a vertical expansion, or a lateral expansion without first having submitted a permit application in accordance with §§330.57, 330.59, 330.61, 330.63, and 330.65 of this title (relating to Permit and Registration Applications for Municipal Solid Waste Facilities; Contents of Part I of the Application; Contents of Part II of the Application; Contents of Part III of the Application; and contents of Part IV of the Application, respectively) and received a permit from the commission, except as provided otherwise in this section.

(b) A separate permit is required for the storage, transportation, or handling of used oil mixtures collected from oil/water separators. Any person that intends to conduct such activity shall comply with the regulatory requirements of Chapter 324 of this title (relating to Used Oil Standards).

(c) Permits by rule may be granted for persons that compact or transport waste in enclosed containers or enclosed transportation units to a Type IV facility.

(1) A permit by rule is granted for a generator operating a stationary compactor that is only used to compact waste to be disposed of at a Type IV landfill, if all of the following conditions are met.

(A) The generator submits the following information and any requested additional information on forms provided by the executive director:

(i) generator contact person, company name, mailing address, street address, city, state, ZIP code, and telephone number;

(ii) contract renewal date, if applicable;

(iii) rated compaction capability in pounds per cubic yard;

(iv) container size;

(v) description of waste stream to enter compactor;

(vi) receiving MSW Type IV disposal facility name, permit number, mailing address, street address, city, state, ZIP code, telephone number, and contact person; and

(vii) a certification from the generator that states the following: I, (name) _____, (title) _____ of (company name) _____, located at (street address) _____ in (city) _____, certify that the contents of the compactor located at the location stated herein are free of and shall be maintained free of putrescible, hazardous, infectious, and any other waste not allowed in an MSW Type IV landfill.

(B) The generator submits a $75 fee along with the claim for the permit by rule.

(C) The generator complies with the operational requirements of §330.215 of this title (relating to Requirements for Stationary Compactors).

(D) A stationary compactor permit by rule expires after one year. The generator must submit an annual renewal fee in the amount of $75. Failure to timely pay the annual fee eliminates the option of disposal of these wastes at a Type IV landfill until the generator claims a new or renewed permit by rule.

(2) A permit by rule is granted for transporters using enclosed containers or enclosed vehicles to collect and transport brush, construction or demolition wastes, and rubbish along special collection routes to MSW Type IV landfill facilities if all of the following conditions are met.

(A) The owner or operator seeking a special collection route permit by rule submits to the executive director the following information and any requested additional information on forms provided by the executive director:

(i) name of owner and operator, mailing address, street address, city, state, ZIP code, name and title of a contact person, and telephone number;

(ii) receiving MSW Type IV disposal facility name, permit number, mailing address, street address, city, state, ZIP code, telephone number, and contact person;

(iii) information on each transportation unit, including, at a minimum, license number, vehicle identification number, year model, make, capacity in cubic yards, and rated compaction capability in pounds per cubic yard;

(iv) route information, which shall include as a minimum the collection frequency, the day of the week the route is to be collected, and the day and time span within which the route is to arrive at the MSW Type IV landfill;

(v) a description of the wastes to be transported;

(vi) an alternative contingency disposal plan to include alternate trucks to be used or alternative disposal facilities; and

(vii) a signed and notarized certification from the owner or operator that states the following: I, (name) _____, (title) _____, of _____ operating in _____ County, certify that the contents of the vehicles described above will be free of putrescible, household, hazardous, infectious, or any other waste not allowed in an MSW Type IV landfill.

(B) The transporter submits a $100 per vehicle fee along with the claim for a permit by rule.

(C) The transporter documents each load delivered with a trip ticket form provided by the executive director, and provides the trip ticket to the landfill operator prior to discharging the load.

(D) A special collection route permit by rule expires after one year. The owner or operator must submit an annual renewal fee in the amount of $100 per vehicle. Failure to timely pay the annual fee eliminates the option of disposal of these wastes at a Type IV landfill until the owner or operator claims a new or renewed permit by rule.

(E) This paragraph does not apply if the waste load is from a single collection point that is a stationary compactor authorized in accordance with paragraph (1) of this subsection.

(3) Revision requirements for stationary compactor permits or special collection route permits by rule identified in paragraphs (1) and (2) of this subsection are as follows.

(A) An update must be submitted if any information within the original permit by rule submittal changes.

(B) A submittal to update an existing permit by rule must include all of the same documentation required for an original permit by rule submittal.

(d) A major permit amendment, as defined by §305.62 of this title (relating to Amendments), is required to reopen a Type I, Type IAE, Type IV, or Type IVAE MSW facility permitted by the commission or any of its predecessor or successor agencies that has either stopped accepting waste, or only accepted waste in accordance with an emergency authorization, for a period of five years or longer. The MSW facilities covered by this subsection may not be reopened to accept waste again unless the permittee demonstrates compliance with all applicable requirements of the Resource Conservation and Recovery Act, Subtitle D and the implementing Texas state regulations. If an MSW facility was subject to a contract of sale on January 1, 2001, the scope of any public hearing held on the permit amendment required by this subsection is limited to land use compatibility, as provided by §330.57(a) of this title. This subsection does not apply to any MSW facility that has received a permit but never received waste, or that received an approved Subtitle D permit modification before September 1, 2001.

(e) A permit by rule is granted for an animal crematory that meets the following criteria. For facilities that do not meet all the requirements of this subsection, the owner or operator shall submit a permit application under §§330.57, 330.59, 330.61, 330.63,

and 330.65 of this title and obtain a permit. To qualify for a permit by rule under this subsection, the following requirements must be met.

(1) General prohibitions. An animal crematory facility shall comply with §330.15(a) of this title (relating to General Prohibitions).

(2) Incineration limits. Incineration of carcasses shall be limited to the conditions specified in §106.494 of this title (relating to Pathological Waste Incinerators (Previously SE 90)). The facility shall not accept animal carcasses that weigh more than the capacity of the largest incinerator at the facility and shall not dismember any carcasses during processing.

(3) Ash control. Ash disposal must be at an authorized facility unless the ash is returned to the animal owner or sent to a pet cemetery. Ash shall be stored in an enclosed container that will prevent release of the ash to the environment. There shall be no more than 2,000 pounds of ash stored at an animal crematory at any given time.

(4) Air pollution control. Air emissions from the facility shall not cause or contribute to a condition of air pollution as defined in Texas Clean Air Act, §382.003. All animal crematories, prior to construction or modification, must have an air permit issued under Chapter 116 of this title (relating to Control of Air Pollution by Permits for

New Construction or Modification), or qualify for a permit by rule under §106.494 of this title.

(5) Fire protection. The facility shall prepare, maintain, and follow a fire protection plan. This fire protection plan shall describe fire protection resources (a local fire department, fire hydrants, fire extinguishers, water tanks, water well, etc.), and employee training and safety procedures. The fire protection plan shall comply with local fire codes.

(6) Storage limits. Carcasses must be incinerated within two hours of receipt, unless stored at or below a temperature of 29 degrees Fahrenheit. Storage of carcasses shall be in a manner that minimizes the release of odors. Storage of carcasses shall be limited to the lesser of 3,200 pounds or the amount that can be incinerated at the maximum loading rate for the incinerators at the facility in a two-day period.

(7) Unauthorized waste. Only carcasses or animal parts, with any associated packaging, shall be processed. Carcasses shall not be accepted in packaging that includes any chlorinated plastics. Carcasses or animal parts that are either hazardous waste or medical waste are prohibited.

(8) Cleaning. Storage and processing units must be properly cleaned on a routine basis to prevent odors and the breeding of flies.

(9) Nuisance prevention. The facility shall be designed and operated in a manner so as to prevent nuisance conditions, including, but not limited to, dust from ashes, disease vectors, odors, and liquids from spills, from being released from the property boundary of the authorized facility.

(10) Diseased animals. The facility shall be equipped with appropriate protective equipment and clothing for personnel handling diseased animals that may be received at the facility. Facility owners or operators must inform customers and local veterinarians of the need to identify diseased animals for the protection of personnel handling the animals.

(11) Buffer zone. An animal crematory, including unloading and storage areas, constructed after March 2, 2003, must be at least 50 feet from the property boundary of the facility.

(12) Operating hours. A crematory shall operate within the time frames allowed by §111.129 of this title (relating to Operating Requirements).

(13) Documentation. The operator of an animal crematory shall document the carcasses' weight, date and time when carcasses are received, and when carcasses are loaded into the incinerator. A separate entry in the records for loading into the incinerator is not required if a carcass is loaded within two hours of receipt. This information will be maintained in records on site.

(14) Breakdown. The facility is subject to §330.241 of this title (relating to Overloading and Breakdown).

(15) Records management. The owner or operator must retain records as follows:

(A) maintain a copy of all requirements of this subsection that apply to the facility;

(B) maintain records for the previous consecutive 12-month period containing sufficient information to demonstrate compliance with all requirements of this subsection;

(C) keep all required records at the facility; and

(D) make the records available upon request to personnel from the commission or from local governments with jurisdiction over the facility.

(16) Fees. An animal crematory facility authorized under this section is exempt from the fee requirements of Subchapter P of this chapter (relating to Fees and Reporting).

(17) Other requirements. No other requirements under this chapter are applicable to a facility that meets all of the requirements of this subsection.

(f) A permit by rule is granted for a dual chamber incinerator if the owner or operator complies with §106.491 of this title (relating to Dual-Chamber Incinerators).

(g) A permit by rule is granted for an air curtain incinerator if the owner or operator complies with §106.496 of this title (relating to Air Curtain Incinerators). An air curtain incinerator may not be located within 300 feet of an active or closed MSW landfill unit boundary.

(h) A standard air permit is granted for facilities that comply with Subchapter U of this chapter (relating to Standard Air Permits for Municipal Solid Waste Landfill Facilities and Transfer Stations).

(i) A permit by rule is granted for a period of up to five years to a county or municipality with a population of 12,000 [10,000] people or less to dispose of demolition waste from properties with nuisance or abandoned buildings.

(1) Requirements. The following conditions must be met.

(A) Form submittal. The county or municipality submits a form provided by the commission to the executive director for review and approval before construction begins.

(B) Notice to regional office. The county or municipality notifies the applicable commission regional office of the intent to dispose of waste under this authorization at least 48 hours prior to accepting the first load of waste.

(C) Facility location. The location where disposal will occur:

(i) is owned or controlled by the county or municipality, and

(ii) receives less than or equal to 25 inches average annual precipitation as determined from precipitation data for the nearest official precipitation

recording station for at least the most recent 30-year reporting period or by another method approved by the executive director.

(D) Sources of waste. The properties on which nuisance and abandoned buildings are located have been acquired by the county or municipality by means of bankruptcy, tax delinquency, or condemnation, and the previous owners are not financially capable of paying the costs of the disposal of demolition waste at a permitted solid waste disposal facility, including transportation of the waste to the facility.

(E) Waste acceptance.

(i) Prior to demolition, structures are surveyed and abated, if required, for asbestos-containing materials in accordance with 25 TAC Chapter 295, Subchapter C (relating to Texas Asbestos Health Protection).

(ii) The facility may accept non-regulated asbestos-containing materials (non-RACM) for disposal. The wastes are placed on the active working face and covered at the end of the operating day with at least six inches of soil. Under no circumstances may any of the material containing non-RACM be placed on a

surface that is subject to vehicular traffic or disposed of by any other means by which the material could be crumbled into a friable state.

(iii) The facility may accept regulated asbestos-containing materials (RACM) if the following conditions are met.

(I) The county or municipality notifies the executive director on a form provided by the commission in accordance with subparagraph (A) of this paragraph.

(II) All waste trenches are identified as receiving RACM, and deed records required under subparagraph (Q) of this paragraph include an indication that the waste trench(es) received RACM.

(III) RACM is transported and received at the facility in tightly closed and unruptured containers or bags or wrapped with at least six-mil polyethylene.

(IV) Bags or containers holding RACM are carefully unloaded and placed in the final disposal location. RACM is then covered immediately

with at least six inches of soil. Care is taken during unloading and placement of RACM and during application of the cover so that the bags or containers are not ruptured.

(iv) Waste is limited to the abandoned or nuisance buildings and materials from the property on which the buildings are located. All waste disposed under this authorization must meet the limitations of §330.5(a)(2) of this title (relating to Classification of Municipal Solid Waste Facilities) and may not include waste prohibited under §330.15(e) of this title.

(F) Access control. Access to the disposal facility is controlled by means of fences, other artificial barriers, natural barriers, or a combination of these methods, and includes a locking gate.

(G) Buffers and easements. The county or municipality maintains a minimum distance of 50 feet as a buffer between the permit boundary and waste storage, processing and disposal areas. No disposal occurs within a utility or pipeline easement or within 25 feet of the center of a utility or pipeline easement.

(H) Below-grade placement. Waste is placed only below grade. The top of final cover is placed at pre-existing grade or up to three feet above pre-existing

grade to ensure that natural drainage patterns are not altered and ponding of water over waste is prevented.

(I) Weekly cover. Waste is covered at least weekly with six inches of earthen material not previously mixed with waste, or by tarps. Use of tarps as cover is limited to a seven-day period after which the county or municipality must replace the tarp with either waste or a six-inch layer of earthen material not previously mixed with waste. Tarps may not be used in place of soil cover requirements relating to non-RACM and RACM in subparagraph (E)(ii) and (iii) of this paragraph. Any trench that has received waste but will be inactive for more than 180 days receives intermediate cover in accordance with subparagraph (J) of this paragraph, or final cover in accordance with subparagraph (P) of this paragraph.

(J) Intermediate cover. Waste is covered, including any soil weekly cover, with twelve inches of well compacted earthen material not previously mixed with waste.

(K) Maximum volume. The design waste disposal volume is less than 2.5 million cubic meters in accordance with §106.534(3) of this title (relating to Municipal Solid Waste Landfills and Transfer Stations).

(L) Facility signs. At all entrances through which waste is received, the facility conspicuously displays a sign with letters at least three inches in height providing a statement that the facility is "NOT FOR PUBLIC USE," an emergency 24-hour contact number that reaches an individual with the authority to obligate the facility at all times that the facility is not in operation, and the local emergency fire department number.

(M) Stormwater and contaminated water. The county or municipality constructs berms to divert the 25-year/24-hour storm event from entering excavations containing waste. Water that has contacted waste is managed as contaminated water and disposed at an authorized treatment facility.

(N) Reporting. The county or municipality, while not required to provide quarterly reporting, provides annual reporting in accordance with the annual reporting provisions of §330.675(a) of this title (relating to Reports).

(O) Reauthorization. Before reaching the permit by rule term limit of five years, the county or municipality may request reauthorization under the permit by rule by submitting a form that is current at the time of reauthorization, provided by the commission in accordance with subparagraph (A) of this paragraph, to the executive director at least 14 days before the end of the permit term.

(P) Final cover. The following conditions are met.

(i) Within 60 days after a trench reaches its capacity or waste deposition activities are complete in a trench, the county or municipality installs final cover over waste in the trench. Final cover shall be composed of no less than two feet of soil. The first 18 inches or more of cover shall be of compacted clayey soil, classification sand clay (SC) or low plasticity clay (CL) as defined in the "Unified Soils Classification System" developed by the United States Army Corps of Engineers, and placed and compacted in layers of no more than six inches to minimize the potential for water infiltration. A high plasticity clayey (CH) soil may be used; however, this soil may experience excessive cracking and shall therefore be covered by a minimum of 12 inches of topsoil to retain moisture. Other types of soil may be used with prior written approval from the executive director. The final six inches of cover shall be of suitable topsoil that is capable of sustaining native plant growth and shall be seeded or sodded as soon as practicable following the application of the final cover in order to minimize erosion.

(ii) The trench final cover procedures listed in clause (i) of this subparagraph are completed before facility closure, as described in subparagraph (Q) of this paragraph. If these procedures cannot be performed before the permit by rule term limit is reached, the county or municipality submits a current application form for

reauthorization of the permit by rule to the executive director at least 14 days before the end of the permit term.

(Q) Facility closure. The county or municipality notifies the executive director and the applicable regional office at least 60 days before the anticipated closure date of the facility. Within ten days after closure, submit to the executive director by registered mail a certified copy of an "affidavit to the public" in accordance with the requirements of §330.19 of this title (relating to Deed Recordation). In addition, record a certified notation of the deed to the facility property, or on some other instrument that is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that the land has been used as a landfill facility and use of the land is restricted. Submit a certified deed to the executive director.

(2) Other provisions. The following provisions also apply to this authorization.

(A) Processing. This permit by rule also authorizes the processing of waste destined for the disposal unit. Authorized processing is limited to volume reduction, such as chipping or grinding, but not burning. Processing must occur within the permit boundary and may not occur within a buffer zone or right-of-way. Tires,

RACM and non-RACM may not be processed. If required, the county or municipality must obtain authorization for air emissions resulting from this processing.

(B) Fees. Waste that is disposed under this authorization is not subject to the fee requirements of Subchapter P of this chapter.

(C) Other requirements. No other requirements under this chapter are applicable to a facility that meets all the requirements of this subsection.

SUBCHAPTER P: FEES AND REPORTING
§§330.671, 330.673, 330.675

Statutory Authority

The amendments are proposed under the authority of: Texas Health and Safety Code (THSC), §361.011, Commission's Jurisdiction: Municipal Solid Waste, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste; THSC, §361.024, Rules and Standards, which provides the commission with rulemaking authority; THSC, §361.061, Permits; Solid Waste Facility, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; THSC, §361.013, Solid Waste Disposal and Transportation Fees; and, THSC 361.014, Use of Solid Waste Fee Revenue.

The proposed amendments implement THSC, §361.013 and §361.o14.

§330.671. Purpose and Applicability.

(a) Purpose.

(1) Fees. The commission is mandated by Texas Health and Safety Code, §361.013, 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. 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 §330.103 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) Industrial solid waste and hazardous waste fees. The assessment of fees for the generation, treatment, storage, or disposal of industrial solid waste or hazardous waste is governed by regulations contained in Chapter 335, Subchapter J of this title (relating to Hazardous Waste Generation, Facility and Disposal Fee [Fees] System).

(3) Reports. The commission requires reports in order to track the amount of waste being stored, treated, processed, or disposed of in the state, to track the amount of processing and disposal capacity and reserve (future) disposal capacity, and to enable equitable assessment and collection of fees.

(b) Applicability.

(1) Fees. Each operator of a municipal solid waste disposal facility or process for disposal is required to pay a fee to the agency based upon the amount of waste received for disposal. For the purpose of this subchapter, "waste received for disposal" means the total amount of the waste (measured in tons or cubic yards, or determined by the population equivalent method specified in §330.675(a)(3) of this title (relating to Reports) received by a disposal facility at the gate, excluding only those wastes that are recycled or exempted from payment of fees under this subchapter or by law. For the purpose of these sections, landfills, waste incinerators, and sites used for land treatment or disposal of wastes, sites used for land application of sludge or similar waste for beneficial use, composting facilities, and other similar facilities or activities are determined to be disposal facilities or processes. Recycling operations or facilities that process waste for recycling are not considered disposal facilities. Source-separated material processed [source separated yard waste composted] at a composting or mulch processing facility, including a composting or mulch processing facility located at a permitted landfill, is exempt from the fee requirements set forth and described in these sections. [For the purpose of these sections, source separated yard waste is defined as leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscape maintenance and land-clearing operations that has been separated and has not been commingled with any other waste material at the point of generation.] The agency will credit any fee payment due under this subchapter for any material received

and processed [converted] to compost or mulch product at the facility [for composting through a composting process]. Any compost or mulch product that is produced at a [for] composting or mulch processing facility that is [not] used in the operation of the facility or is disposed of [as compost and is deposited] in a landfill or used as landfill daily cover is not exempt from the fee.

(2) Industrial solid waste and hazardous waste fees. A fee for disposal of an industrial solid waste or hazardous waste in a municipal solid waste disposal facility shall be assessed at the rates prescribed under the authority of Chapter 335, Subchapter J of this title. If no fee under Chapter 335, Subchapter J of this title, is applicable to the disposal of an industrial solid waste or hazardous waste, then such waste shall be assessed a fee under this chapter for the disposal of solid waste in a municipal solid waste facility.

(3) Reports. All registered or permitted facility operators are required to submit reports to the executive director covering the types and amounts of waste processed or disposed of at the facility or process location; other pertinent information necessary to track the amount of waste generated and disposed of, recovered, or recycled; and the amount of processing or disposal capacity of facilities. The information requested on forms provided by the executive director shall not be considered confidential or classified information unless specifically authorized by law, and refusal

to submit the form complete with accurate information by the applicable deadline shall be considered as a violation of this section and subject to appropriate enforcement action and penalty.

(4) Interest penalty. Owners or operators of a facility failing to make payment of the fees imposed under this subchapter when due shall be assessed penalties and interest in accordance with Chapter 12 of this title (relating to Payment of Fees).

§330.673. Fees.

(a) Landfilling. Each operator of a facility in Texas that disposes of municipal solid waste (MSW) by means of landfilling, including landfilling of incinerator ash, is required to pay a fee to the agency for all waste received for disposal. The fee rate for waste disposed of by landfilling is dependent upon the reporting units used.

(1) Fee rates. For purposes of this subsection, uncompacted waste means any waste that is not a liquid or a sludge, has not been mechanically compacted by a collection vehicle, has not been driven over by heavy equipment prior to collection, or has not been compacted subsequent or prior to collection by any type of mechanical device other than small, in-house, compactor devices owned and/or operated by the generator of the waste. Compacted waste is a liquid, sludge, or similar waste or any

waste that has been reduced in volume by a collection vehicle or by any other means including, but not limited to, dewatering, composting, incineration, and similar processes.

(A) Tons. For waste reported in tons, the fee rate is $0.94 [$1.25] per ton received for disposal.

(B) Cubic yards (compacted). For waste reported in compacted cubic yards, the fee rate is $0.30 [$0.40] per cubic yard received for disposal.

(C) Cubic yards (uncompacted). For waste reported in uncompacted cubic yards, the fee rate is $0.19 [$0.25] per cubic yard received for disposal.

(2) Measurement options. The volume or weight reported on the quarterly solid waste summary report must be consistent with the volume or weight of the waste received for disposal, as defined in §330.671(b)(1) of this title (relating to Purpose and Applicability). The volume or weight of the waste received for disposal shall be determined prior to disposal or processing of the waste.

(A) The recommended method for measuring and reporting waste received at the gate is in short tons. The facility operator must accurately measure and report the number of cubic yards or tons of waste received at the gate.

(i) The fee for waste reported in short tons will be calculated by the executive director at an amount equal to $0.94 [$1.25] per ton.

(ii) The fee for compacted waste reported in cubic yards will be calculated by the executive director at an amount equal to $0.30 [$0.40] per cubic yard.

(iii) The fee for uncompacted waste reported in cubic yards will be calculated by the executive director at an amount equal to $0.19 [$0.25] per cubic yard.

(B) If a landfill operator chooses to report the amount of waste received utilizing the population equivalent method authorized in §330.675(a)(3) of this title (relating to Reports), the fee for such waste received shall be calculated by the executive director at an amount equal to $0.94 [$1.25] per ton.

(3) Fee calculation. The fee shall be calculated by the executive director using information obtained from the quarterly solid waste summary report. The total cubic yards or tonnage reported to the executive director in the quarterly solid waste summary report shall be derived from gate tickets (weight or volume) or invoices, except in the case of operators who are authorized to report utilizing the population equivalent method in §330.675(a)(3) of this title, and records of recycled materials or any other information deemed relevant by the executive director. A billing statement will be generated quarterly by the executive director and forwarded to the applicable permittee/registrant or a designated representative.

(4) Fee due date. All solid waste fees shall be due within 30 days of the date the payment is requested.

(5) Method of payment. The required fee shall be submitted in the form of a check or money order made payable to the Texas Commission on Environmental Quality and delivered or mailed to the return address designated by the executive director in the billing statement distributed quarterly.

(6) Penalties. Failure of the landfill operator to submit the required fee payment by the due date shall be sufficient cause for the commission to revoke the landfill permit and authorization to process or dispose of waste. The commission may

assess interest penalties for late payment of fees and may also assess penalties (fines) in accordance with Texas Water Code, §7.051 (relating to Administrative Penalty), or take any other action authorized by law to secure compliance.

(7) Exemptions.

(A) A fee will not be charged on solid waste resulting from a public entity's effort to protect the public health and safety of the community from the effects of a natural or man-made disaster or from structures that have been contributing to drug trafficking or other crimes if the disposal facility at which that solid waste is offered for disposal has donated to a municipality, county, or other political subdivision the cost of disposing of that waste.

(B) A fee only for the amount determined necessary to reimburse MSW regulatory activities will be charged federal facilities. Prior to the fourth MSW billing quarter following the close of each regular session of the Texas State Legislature, the Texas Commission on Environmental Quality's chief financial officer will determine the percentage of the MSW disposal fee that represents reimbursement for regulatory implementation of the state MSW program and the percentage that represents a state tax. The percentage determination shall be reported to the MSW Permits Section for use in determining fees owed by federal facilities. The MSW Permits Section shall grant

federal facilities a credit on their MSW fees equal to the percentage of the fee determined to be a state tax. The credit shall be applied to each billing quarter beginning with the first billing quarter of the state fiscal year.

(b) Incinerators and processes for disposal. Each operator of a facility that disposes of or processes MSW for disposal by means other than landfilling is required to pay a fee to the agency for all waste received for processing or disposal. Facilities and/or processes included in this category include, but are not limited to, incineration; composting; application of sludge, septic tank waste, or shredded waste to the land; and similar facilities or processes. Not included as a process for disposal is land application of waste that has already been properly composted in one of the facilities named.

(1) Fee rates. For purposes of this subsection, uncompacted waste means any waste that is not a liquid or a sludge, has not been mechanically compacted by a collection vehicle, has not been driven over by heavy equipment prior to collection, or has not been compacted subsequent or prior to collection by any type of mechanical device other than small, in-house, compactor devices owned and/or operated by the generator of the waste. Compacted waste is a liquid, sludge, or similar waste or any waste that has been reduced in volume by a collection vehicle or by any other means including, but not limited to, dewatering, composting, incineration, and similar processes.

(A) Tons. For waste reported in tons, the fee rate is $0.47 [$0.62 and one-half cent] per ton received.

(B) Cubic yards (compacted). For waste reported in compacted cubic yards, the fee rate is $0.15 [$0.20] per cubic yard received.

(C) Cubic yards (uncompacted). For waste reported in uncompacted cubic yards, the fee rate is $0.09 [$0.12] and one-half cent per cubic yard received.

(2) Measurement options. The volume or weight reported on the quarterly solid waste summary report must be consistent with the volume or weight of the waste received for disposal, as defined in §330.671(b)(1) of this title. The volume or weight of the waste received for disposal shall be determined prior to disposal or processing of the waste.

(A) The recommended method for measuring and reporting waste received at the gate is in short tons. The operator must accurately measure and report the number of cubic yards or tons of waste received.

(i) The fee for waste reported in short tons will be calculated by the executive director at an amount equal to $0.47 [$0.62 and one-half cent] per ton.

(ii) The fee for compacted waste reported in cubic yards will be calculated by the executive director at an amount equal to $0.15 [$0.20] per cubic yard.

(iii) The fee for uncompacted waste reported in cubic yards will be calculated by the executive director at an amount equal to $0.09 [$0.12] and one-half cent per cubic yard.

(B) If a facility operator chooses to report the amount of waste received utilizing the population equivalent method authorized in §330.675(a)(3) of this title, the fee shall be calculated by the executive director at an amount equal to $0.47 [$0.62 and one-half cent] per ton.

(3) Fee calculation. The fee shall be calculated by the executive director using information obtained from the quarterly solid waste summary report. The total cubic yards or tonnage reported to the executive director in the quarterly solid waste summary report shall be derived from gate tickets (weight or volume) or invoices, except in the case of operators who are authorized to report utilizing the population equivalent

method in §330.675(a)(3) of this title, and records of recycled materials or any other information deemed relevant by the executive director. A billing statement will be generated quarterly by the executive director and forwarded to the applicable permittee/registrant or a designated representative.

(4) Fee due date. All solid waste fees shall be due within 30 days of the date the payment is requested.

(5) Method of payment. The required fee shall be submitted in the form of a check or money order made payable to the Texas Commission on Environmental Quality and delivered or mailed to the return address designated by the executive director in the billing statement distributed quarterly.

(6) Penalties. Failure of the facility or process operator to submit the required fee payment by the due date shall be sufficient cause for the commission to revoke the permit or registration and authorization to process or dispose of waste. The commission may assess interest penalties for late payment of fees and may also assess penalties (fines) in accordance with Texas Water Code, §7.051, or take any other action authorized by law to secure compliance.

(7) Exemptions. A fee will not be charged on solid waste resulting from a public entity's effort to protect the public health and safety of the community from the effects of a natural or man-made disaster or from structures that have been contributing to drug trafficking or other crimes if the disposal facility at which that solid waste is offered for disposal has donated to a municipality, county, or other political subdivision the cost of disposing of that waste.

(c) Facilities and processes not for disposal. Facilities or processes not included in the scope of subsections (a) and (b) of this section shall be considered as "facilities and processes not for disposal." Facilities and processes not for disposal are those facilities that are permitted or registered independently from landfill, incinerator, or disposal processing operations and include, but are not limited to, such facilities or processes as transfer stations, shredders, balers, methane extractors, etc. Facilities and processes not for disposal are not required to pay a fee to the agency, but are required to submit reports.

§330.675. Reports.

(a) Disposal facilities and processes.

(1) Municipal Solid Waste Fee Report frequency, report form, and report information.

(A) Report frequency. Quarterly, each disposal facility or process operator shall report to the executive director the information requested on the report form for the appropriate reporting period including the amount of source-separated material processed [source separated yard waste converted] to compost or mulch product [product for composting]. Annually, the operator shall submit a summary of the information to show the yearly totals and year-end status of the facility or process, as requested on the report form, for the appropriate reporting period. An operator shall file a separate report for each facility that has a unique permit, permit application number, or registration number.

(B) Report form. The report shall be on a form furnished by the executive director or reproduced from a form furnished by the executive director or by an electronic form or format furnished by the executive director. Forms reproduced by the facility operator are not recommended because each report form for each reporting period will have two unique numbers on each form. One number will specifically identify the facility for which the report is made; the other number will specifically identify the individual form. To use the wrong form, or the form intended for a different reporting period, will automatically make the data incorrect for that facility report. The

operator will receive one form from the executive director for each facility or process prior to the due date. The operator must assure that the data entered on the form are applicable for the particular facility and period for which the data are reported.

(C) Report information. In addition to a statement of the amount of waste received for processing or disposal, the report shall contain other information requested on the form, including the facility operator's name, address, and phone number; the permit number, permit application number, or registration number; the facility type, size, and capacity; and other information the executive director may request.

(2) Reporting units. The amount of waste received for processing or disposal shall be reported in short tons (2,000 pounds) or in cubic yards as received (compacted or uncompacted) at the gate. If accounting of the waste is recorded in cubic yards, then separate accounting must be made for waste that comes to the facility in open vehicles or without compaction, and waste that comes to the facility in compactor vehicles. If scales are not utilized and accounting of the waste received is in cubic yards, gallons, or drums then those volumetric units may be converted to tons for reporting purposes, using the conversion factors set forth in subparagraphs (A) and (B) of this paragraph.

(A) General weight/volume conversion factors for various types of waste shall be as follows:

(i) one ton = 2,000 pounds;

(ii) one gallon = 7.5 pounds (grease trap waste);

(iii) one gallon = 8.5 pounds (wastewater treatment plant sludge or septage);

(iv) one gallon = 9.0 pounds (grit trap waste); and

(v) one drum = 55 gallons.

(B) Conversion factors to be used for waste transport vehicles relative to waste volume and weight in vehicles shall be as follows:

(i) one cubic yard = 400 pounds (no compaction);

(ii) one cubic yard = 666.66 pounds (medium compaction); and

(iii) one cubic yard = 800 pounds (heavy compaction).

(3) Use of population equivalent. In determining the amount of waste deposited in a landfill serving less than 5,000 people or the amount of waste processed for disposal at a processing facility serving less than 5,000 people, the owner/operator may use the number of tons calculated or derived from the population served by the facility in lieu of maintaining records of the waste deposited at the facility. The amount of waste shall be calculated on the basis of one ton per person per year. The report shall document the population served by the facility and reflect any changes since the previous report.

(4) Reporting units for beneficial land use application sites. Wastewater treatment plant sludge and septage received for disposal at registered beneficial use land application sites in vacuum or closed tank trucks may be reported in dry weight equivalent units, provided the site operator either produces satisfactory documentation indicating the percent solids present in the received waste materials or uses the dry weight/volume conversion factors set forth in subparagraphs (A) and (B) of this paragraph:

(A) one gallon = 0.5 pounds (sludge - dry weight equivalent); and

(B) one gallon = 0.3 pounds (septage - dry weight equivalent).

(5) Report due date. The required quarterly solid waste summary report shall be submitted to the executive director not later than 20 days following the end of the fiscal quarter for which the report is applicable. The fiscal year begins on September 1, and concludes on August 31.

(6) Method of submission. The required report shall be delivered or mailed to the agency to the return address designated by the executive director in the billing statement distributed quarterly.

(7) Penalties. Failure of the facility or process operator to submit the required report by the due date shall be sufficient cause for the commission to revoke the permit or registration and authorization to process or dispose of waste. The commission may assess interest penalties for late payment of fees and may also assess penalties (fines) in accordance with Texas Water Code, §7.051 (relating to Administrative Penalty) or take any other action authorized by law to secure compliance.

(b) Facilities and processes not for disposal. Facilities and processes not for disposal (as defined in §330.673(c) of this title (relating to Fees)) are subject to reporting requirements, but are not required to pay a fee.

(1) Municipal Solid Waste Annual Summary Report frequency, report form, and report information.

(A) Report frequency. Annually, each facility or process operator shall report to the executive director the information requested on the report form for the appropriate reporting period. An operator shall file a separate report for each facility that has a unique permit, permit application number, or registration number.

(B) Report form. The form of the report shall be in accordance with subsection (a)(1)(B) of this section.

(C) Report information. The information in the report shall be in accordance with subsection (a)(1)(C) of this section.

(2) Reporting units. The units used in reporting shall be in accordance with subsection (a)(2) of this section.

(3) Use of population equivalent. The use of the population equivalent method of reporting waste received or processed shall be in accordance with subsection (a)(3) of this section.

(4) Report due date. The required annual report shall be submitted to the executive director not later than 45 days following the calendar year for which the report is applicable.

(5) Method of submission. The required report shall be delivered or mailed to the agency to the return address designated by the executive director in the billing statement distributed quarterly.

(6) Penalties. Failure of the facility or process operator to submit the required report by the due date shall be sufficient cause for the commission to revoke the permit or registration and authorization to process or dispose of waste. The commission may assess interest penalties for late payment of fees and may also assess penalties (fines) in accordance with Texas Water Code, §7.051 or take any other action authorized by law to secure compliance.