

SUBCHAPTER F: OPERATIONS REQUIRING A REGISTRATION
§§326.61, 326.63, 326.65, 326.67, 326.69, 326.71, 326.73, 326.75, 326.77
Effective May 26, 2016

§326.61. Applicability and General Information.

(a) A registration is required for facilities that store or process untreated medical waste that is received from off-site sources. The executive director may authorize these facilities to store and process other related waste. For the purposes of this subsection, off-site shall be any location that does not meet the definition of on-site found in §326.3 of this title (relating to Definitions). No person may cause, suffer, allow, or permit any activity of storage, processing, removal, or disposal of any medical waste unless that activity is authorized by a registration or other authorization from the commission. In the event this prohibition 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 waste to be stored, processed, or disposed.

(b) No person may commence physical construction of a new medical waste management facility subject to this registration requirement without having received a registration from the commission.

(c) Registration application. A registration application for a medical waste facility is not subject to an opportunity for a contested case hearing.

(d) The information required by this subchapter defines the basic elements for an application. All aspects of the application and design requirements must be addressed by the owner or operator, even if only to show why they are not applicable for that particular site.

(e) The applicant for a medical waste facility registration shall provide the executive director data of sufficient completeness, accuracy, and clarity to provide assurance that operation of the site will pose no endangerment of the human health and welfare or the environment.

(f) Failure of the owner or operator to provide complete information as required by this chapter may provide cause for the executive director to return the application without further action.

(g) Submission of false information shall constitute grounds for denial of the registration application.

(h) Processing facilities registered under subsection (a) of this section, excluding facilities operating as transfer station only, may store or process municipal solid waste that would be classified as medical waste if it were generated by health care-related facilities. This municipal solid waste shall be subject to the same requirements as medical waste when it is accepted by a facility that is only a registered medical waste facility.

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§326.63. Property Rights.

(a) It is the responsibility of an owner or operator to possess or acquire a sufficient interest in or right to the use of the surface estate of the property for which an authorization is issued, including the access route if access is not provided by public right of way. The granting of an authorization neither conveys any property rights or interest in either real or personal property nor authorizes any injury to private property, invasion of personal rights, impairment of previous contract rights, or any infringement of federal, state, or local laws or regulations outside the scope of the authority under which an authorization is issued.

(b) The owner or operator shall retain the right of entry to the facility until the end of the closure activities for inspection and maintenance of the facility.

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§326.65. Relationships with Other Governmental Entities.

(a) Special districts. The Texas Health and Safety Code (THSC) applies to political subdivisions of the state to which the legislature has given waste handling authority for two or more counties. The relationship between the agency and any such waste handling authority will be similar to that between the agency and a county.

(b) Municipal governments. Municipalities may enforce the provisions of this chapter as provided for in the THSC and the Texas Water Code (TWC). The commission is committed to assisting municipal governments in an educational and advisory capacity. The commission is a necessary and indispensable party to any suit filed by a local government under the THSC and the TWC.

(c) County governments. County governments may exercise the authority provided in THSC, Chapters 361, 363, and 364, regarding the management of solid waste including the enforcement of the requirements of the THSC and of this chapter. The provisions of THSC, Chapters 361, 363, and 364, allow county governments to require and issue licenses authorizing and governing the operation and maintenance of facilities used for the storage, processing, or disposal of solid

waste not in the territorial or extraterritorial jurisdiction of a municipality. THSC, Chapters 361, 363, and 364, provide that no license for disposal of solid waste may be issued, renewed, or extended without the prior approval of the commission. Under TWC, Chapter 7, the commission is a necessary and indispensable party to any suit filed by a local government for the violation of any provision of the Solid Waste Disposal Act. If an authorization is issued, renewed, or extended by the commission, the owner or operator of the facility does not need to obtain a separate license for the same facility from a county or from a political subdivision as defined in THSC, Chapters 361, 363, and 364.

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§326.67. Relationship with County Licensing System.

(a) General procedures. Under Texas Health and Safety Code, Chapters 361, 363, and 364, counties are empowered to require and issue licenses authorizing and governing the operation and maintenance of medical waste storage, processing, or disposal facilities not within the territorial limits or extraterritorial jurisdiction of incorporated cities and towns. The county shall mail a copy of the approved license to the appropriate agency regional office. The territorial limits and the extraterritorial jurisdiction of incorporated cities and towns are excluded from county authority to make regulations for the governing and controlling of medical waste collection, processing, and storage.

(b) Licensing procedures. The following pertain only to those counties that may choose to exercise licensing authority in accordance with this section.

(1) Licensing authority.

(A) Before exercising licensing authority for a medical waste facility required to obtain a registration, a county government shall promulgate regulations that are consistent with those established by the commission and that have been approved by the commission.

(B) Before exercising licensing authority for a medical waste facility that is not required to obtain a registration, a county government shall promulgate regulations that are compatible with those established by the commission. County regulations must be submitted to the commission for approval. At a minimum, county regulations shall be protective of human health and the environment.

(C) A county may not make regulations for medical waste management within the extraterritorial or territorial jurisdiction of incorporated cities or towns.

(D) Only the commission may issue registrations for medical waste facilities located within the extraterritorial or territorial jurisdiction of incorporated cities or towns within the county.

(E) A county license for a medical waste facility may not be issued, extended, or renewed without prior approval of the commission.

(F) Once a license is issued by a county and remains valid, a registration from the commission is not required.

(2) Public meeting. A county shall offer an opportunity to request for a public meeting, and issue appropriate notifications, in accordance with the procedures established in §326.73 of this title (relating to Registration Application Processing).

(c) Contents of a license. A license for a medical waste facility issued by a county must include:

(1) the name and address of each person that owns the land on which the medical waste facility is located and the person that is or will be the operator of the facility;

(2) a legal description of the land on which the facility is located;

(3) the terms and conditions on which the license is issued, including the duration of the license; and

(4) the volume of waste to be managed.

(d) Licensee's responsibilities. Medical waste facilities licensed by a county shall be operated in compliance with regulations of the commission and the county.

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§326.69. Registration Application Formatting, Posting, Appointment and Fees.

(a) Registration applications for medical waste must be initially submitted in three copies. The owner or operator shall furnish additional copies of the application for use by required reviewing agencies, upon request of the executive director. The executive director is authorized to approve requests to submit this information electronically if the commission develops electronic systems to manage the data.

(b) Preparation. Preparation of the application must conform with the Texas Occupations Code, Chapter 1001, Texas Engineering Practice Act.

(1) The responsible engineer shall provide the firm number and seal, sign, and date the title page of each bound engineering report or individual engineering plan, table of contents and each engineering drawing in the application as required by Texas Engineering Practice Act, §1001.401, and in accordance with 22 TAC §137.33 (relating to Sealing Procedures).

(2) Applications that have not been sealed shall be considered incomplete for the intended purpose and shall be returned to the owner or operator.

(c) Application format.

(1) Applications shall be submitted in three-ring binders.

(2) The title page shall include:

(A) name of the facility;

(B) medical waste registration application number, if assigned;

(C) name of owner and operator;

(D) location by city and county;

(E) date the application was prepared;

(F) the seal and signature of the engineer preparing the application; and the firm number; and

(G) when applicable, the number and date of the revision.

(3) The table of contents shall contain the main sections and the corresponding page numbers of the application.

(4) The narrative of the application shall be printed on 8-1/2 by 11 inches white paper. Drawings or other sheets shall be no larger than 11 by 17 inches so that they can be reproduced by standard office copy machines.

(5) All pages shall contain a page number and date.

(6) Revisions to text shall be tracked to document insertions, deletions and formatting changes. Revised pages shall have the revision date and indicate "Revised" in the footer of each revised page. A minimum of three clean copies of all revised pages shall also be provided.

(7) Dividers and tabs are recommended.

(d) Application drawings.

(1) All information contained on a drawing shall be legible, even if it has been reduced. The drawings shall be 8-1/2 by 11 inches or 11 by 17 inches. Standard-sized drawings (24 by 36 inches) folded to 8-1/2 by 11 inches may be submitted or required if reduction would render them illegible or difficult to interpret.

(2) If color coding is used, it should be distinct when reproduced on black and white photocopy machines.

(3) Drawings shall be submitted at a standard engineering scale.

(4) Each drawing, plan drawing or map shall have a:

(A) dated title block;

(B) bar scale at least one-inch long;

(C) revision block;

(D) responsible engineer's or geoscientist's seal, if required; and

(E) drawing number and a page number.

(5) Each plan drawing or map shall also have:

(A) a north arrow. Preferred orientation is to have the north arrow pointing toward the top of the page;

(B) a reference to the base map source and date, if the map is based upon another map. The latest published edition of the base map should be used; and

(C) a legible legend.

(6) Match lines and section lines shall reference the drawing where the match or section is shown. Section drawings should note from where the section was taken.

(e) Posting application information.

(1) Upon submittal of an application that requires public notice, the owner or operator shall provide a complete copy of the application, including all revisions and supplements to the application, on a publicly accessible internet website, and provide the commission with the Web address link for the application materials. This internet posting is for informational purposes only.

(2) The commission shall post on its website the identity of all owners and operators filing an application and the Web address link required by this subsection.

(f) Appointments. The owner or operator shall provide documentation that the person signing the application meets the requirements of §305.44(a) and (b) of this title (relating to Signatories to Applications). If the authority has been delegated, provide a copy of the document issued by the governing body of the owner or operator authorizing the person that signed the application to act as agent for the owner or operator.

(g) Application fees. In accordance with §305.53 of this title (relating to Application Fee), the application fee for a registration, modification, or temporary authorization is \$150.

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§326.71. Registration Application Contents.

(a) Maps and Drawings.

(1) General location map. The owner or operator shall submit a general location map of the facility at a scale of one inch equals 2,000 feet by using a United States Geological Survey 7 1/2-minute quadrangle sheet or equivalent as the base map.

(2) Facility access and facility layout. A set of maps or drawings showing:

(A) public access roads serving the facility;

(B) longitudinal and latitudinal geographic coordinates for the point of beginning of the facility boundary's metes and bounds description;

(C) facility boundary;

(D) provisions for the maintenance of any natural windbreaks, such as greenbelts, where they will improve the appearance and operation of the facility and, where appropriate, plans for screening the facility from public view;

(E) all site entrance roads from public access roads;

(F) fencing;

(G) general locations of main interior facility roadways; the location and surface type of all roads within one mile of the facility that will normally be used by the owner or operator for entering or leaving the facility;

(H) locations of buildings and a descriptive title of their purpose;

(I) outline of the waste management units and ancillary equipment for loading/unloading, storage and processing areas;

(J) drainage, pipeline, and utility easements within the facility;
and

(K) any other graphic representations or marginal explanatory notes necessary to communicate the proposed construction phases of the facility, if applicable.

(3) Land-use map. This is a constructed map of the facility showing the facility boundary (registration boundary) of the facility and any existing zoning on or surrounding the property and actual uses (e.g., agricultural, industrial, residential) both within the facility and within one mile of the facility. The owner or operator shall make every effort to show the location of residences, commercial establishments, schools, licensed day-care facilities, churches, cemeteries, ponds or lakes, and recreational areas within one mile of the facility boundary.

(4) Published zoning map. If available, a published zoning map for the facility and within one mile of the facility for the county or counties in which the facility is or will be located. If the facility requires approval as a nonconforming use or a special permit from the local government having jurisdiction, a copy of such approval shall be submitted.

(5) Impact on surrounding area. The use of any land for a medical waste facility shall not adversely impact human health or the environment. The owner or operator shall provide information regarding the likely impacts of the facility on cities, communities, groups of property owners, or individuals by analyzing the compatibility of land use, zoning in the vicinity, community growth patterns, and any other factors associated with the public interest. To assist the commission in evaluating the impact of the facility on the surrounding area, the owner or operator shall provide the following:

(A) information about the character of surrounding land uses within one mile of the proposed facility;

(B) information about growth trends within five miles of the facility with directions of major development; and

(C) the proximity to residences and other uses (e.g., schools, churches, cemeteries, historic structures and sites, archaeologically significant sites, sites having exceptional aesthetic quality, etc.) within one mile of the facility. The owner or operator shall provide the approximate number of residences and commercial establishments within one mile of the proposed facility including the distances and directions to the nearest residences and commercial establishments. Population density and proximity to residences and other uses described in this paragraph may be considered for assessment of compatibility.

(6) Land ownership map with accompanying landowners list. The applicant shall include a list of landowners within 1/4 mile of the facility and their addresses along with an appropriately scaled map locating the property owned by these persons. The landowners' list shall be keyed to the land ownership map and shall give each property owner's name and mailing address. Notice of an application is not defective if property owners did not receive notice because they were not listed in the real property appraisal records. The list shall also be provided in electronic form.

(7) Metes and bounds. The applicant shall include a drawing and a description of the facility boundary signed and sealed by a registered professional land surveyor.

(b) Property owner affidavit. The applicant shall provide a property owner affidavit that is signed by the owner and includes:

(1) acknowledgment that the State of Texas may hold the property owner of record either jointly or severally responsible for the operation, maintenance, and closure of the facility; and

(2) acknowledgment that the facility owner or operator and the State of Texas shall have access to the property during the active life and after closure for the purpose of inspection and maintenance.

(c) Licensed operator. The owner or operator shall acknowledge that a licensed solid waste facility supervisor, as defined in Chapter 30 of this title (relating to Occupational Licenses and Registrations), be employed before commencing facility operation.

(d) Legal authority. The owner and operator shall provide verification of their legal status as required by §281.5 of this title (relating to Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits). This shall be a one-page certificate of incorporation issued by the secretary of state.

(e) Transportation. The owner or operator shall:

(1) provide data on the availability and adequacy of roads that the owner or operator will use to access the site;

(2) provide data on the volume of vehicular traffic on access roads within one mile of the proposed facility, both existing and expected, during the expected life of the proposed facility;

(3) project the volume of traffic expected to be generated by the facility on the access roads within one mile of the proposed facility; and

(4) submit documentation of coordination of all designs of proposed public roadway improvements such as turning lanes, storage lanes, etc., associated with site entrances with the entity exercising maintenance responsibility of the public roadway involved. In addition, the owner or operator shall submit documentation of coordination with the Texas Department of Transportation for traffic and location restrictions.

(f) Facility surface water drainage report. The owner or operator of a medical waste facility shall include a certification statement that:

(1) The facility will be constructed, maintained, and operated to manage run-on and run-off during the peak discharge of a 25-year rainfall event and must prevent the off-site discharge of waste and feedstock material, including, but not limited to, in-process and/or processed materials.

(2) Surface water drainage in and around a facility will be controlled to minimize surface water running onto, into, and off the treatment area.

(3) The owner or operator will obtain the appropriate Texas Pollutant Discharge Elimination System storm water permit coverage when required; or shall provide the permit number for coverage under an individual wastewater permit.

(4) The facility will be located outside of the 100-year floodplain unless the owner or operator can demonstrate that the facility is designed and will be operated in a manner to prevent washout of waste during a 100-year storm event, or the facility obtains a conditional letter of map amendment from the Federal Emergency Management Administration administrator.

(5) The facility will not be located in wetlands unless the owner or operator provides documentation to the extent required under Clean Water Act, §404 or applicable state wetlands laws, that steps have been taken to attempt to achieve no net loss of wetlands.

(g) Council of governments and local government review request. The owner or operator shall submit documentation that the application was submitted for review to the applicable council of governments for compliance with regional solid waste plans. The owner or operator shall also submit documentation that a review letter was requested from any local governments as appropriate for compliance with local solid waste plans. Review letters from the aforementioned entities are not a prerequisite to a final determination on a registration application.

(h) General description of the facility location and design.

(1) Facility location. The owner or operator shall provide:

(A) a description of the location of the facility with respect to known or easily identifiable landmarks;

(B) the access routes from the nearest United States or state highway to the facility; and

(C) longitudinal and latitudinal geographic coordinates for the point of beginning of the facility boundary's metes and bounds description.

(2) Facility access. The owner or operator shall describe how access will be controlled for the facility such as the type and location of fences or other suitable means of access control to protect the public from exposure to potential health and safety hazards, and to discourage unauthorized entry.

(3) Buffer zones and easement protection. No solid waste unloading, storage, or processing operations shall occur within any easement, buffer zone, or right-of-way that crosses the facility. Processing equipment and storage areas shall maintain a minimum separating distance of 25 feet between the facility boundary and processing equipment, loading, unloading and storage areas. Storage units in transport vehicles are not subject to this subsection provided that the waste is stored in refrigerated units with temperatures below 45 degrees Fahrenheit. The executive director may consider alternatives to the buffer zone requirements of this subsection where the owner or operator demonstrates that the buffer zone is not feasible and affords ready access for emergency response and maintenance. The buffer zone shall not be narrower than that necessary to provide for safe passage for firefighting and other emergency vehicles. The executive director may consider

alternatives to buffer zone requirements for authorized medical waste storage and processing facilities.

(4) Flow diagrams and narrative. The owner or operator shall provide flow diagrams showing the various phases of collection, separation, processing, and disposal as applicable for the types of wastes received at the facility along with a narrative describing each phase;

(i) Waste management unit design.

(1) The owner or operator shall provide generalized construction information or manufacturer specifications of all storage and processing units (autoclaves, incinerators, etc.) and ancillary equipment (i.e., tanks, foundations, sumps, etc.) with regard to number of units, approximate dimensions and capacities, construction materials, vents, covers, enclosures, protective coatings of surfaces, etc.

(2) The owner or operator shall provide generalized description of construction materials for slab and subsurface supports of all storage and processing components.

(3) The owner or operator shall provide storage and processing areas designed to control and contain spills and contaminated water from leaving the facility. The design shall be sufficient to control and contain a worst case spill or release. Unenclosed containment areas shall also account for precipitation from a 25-year, 24-hour storm.

(4) The owner or operator shall acknowledge that the storage of medical waste must be in a secure manner and in a location that affords protection from theft, vandalism, inadvertent human or animal exposure, rain, water, and wind. The waste must be managed so as not to provide a breeding place or food for insects or rodents, and not generate noxious odors.

(5) For putrescible or biohazardous untreated medical waste, maintaining a temperature of 45 degrees Fahrenheit or less during pre-collection storage is optional. Such medical waste stored for longer than 72 hours during post-collection storage period shall be maintained at a temperature of 45 degrees Fahrenheit or less.

(j) Treatment requirements. Medical waste shall be treated in accordance with the provisions of 25 TAC §1.136 (relating to Approved Methods of Treatment and Disposition). The owner or operator shall provide a written procedure for the operation and testing of any equipment used and for the preparation of any chemicals used in treatment and comply with the following:

(1) The operator shall demonstrate a minimum four log ten reduction as defined in 25 TAC §1.132 (relating to Definitions) on routine performance testing using appropriate *Bacillus* species biological indicators (as defined in 25 TAC §1.132).

(2) The operator shall conduct testing weekly.

(3) For those processes that the manufacturer has documented compliance with the performance standard prescribed in 25 TAC §1.135 based on specified parameters (for example, pH, temperature, pressure, etc.), and for previously approved treatment processes that a continuous readout and record of operating parameters is available, the operator may substitute routine parameter monitoring for biological monitoring. The operator shall confirm that any chemicals or reagents used as part of the treatment process are at the effective treatment strength. The operator will maintain records of operating parameters and reagent strength for three years.

(4) The manufacturer of single-use, disposable treatment units shall be responsible for maintaining adequate quality control for each lot of single-use products. The treating facility or entity shall be responsible for following the manufacturer's instructions.

(5) Operators of medical waste treatment equipment shall use backflow preventers on any potable water connections to prevent contamination of potable water supplies.

(6) Owners or operators of medical waste incinerators shall comply with the requirements in §111.123 of this title (relating to Medical Waste Incinerators) in lieu of biological or parametric monitoring.

(7) Alternative treatment technologies may be approved in accordance with requirements found in 25 TAC §1.135 (relating to Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities).

(k) Closure plan. The facility closure plan shall be prepared in accordance with the following criteria.

(1) Facility units shall be dismantled and removed off-site or decontaminated.

(2) The owner or operator shall remove all waste and material on-site (unprocessed, in process, and processed), transport them to an authorized facility and disinfect all contaminated water handling units and all processing areas.

(3) Closure of the facility must be completed within 180 days following the last acceptance of processed or unprocessed materials unless otherwise directed or approved in writing by the executive director.

(l) Certification of final closure.

(1) No later than 90 days prior to the initiation of a final facility closure, the owner or operator shall, through a published notice in the newspaper(s) of largest circulation in the vicinity of the facility, provide public notice for final facility closure. This notice shall provide the name, address, and physical location of the facility; the registration number, as appropriate; and the last date of intended receipt of waste. The owner or operator shall also make available an adequate number of copies of the approved final closure plan for public access and review. The owner or operator shall also provide written notification to the executive director of the intent to close the facility and place this notice of intent in the operating record.

(2) Upon notification to the executive director as specified in paragraph (1) of this subsection, the owner or operator of a medical waste management facility shall post a minimum of one sign at the main entrance and all other frequently used points of access for the facility notifying all persons who may utilize the facility of the date of closing for the entire facility and the prohibition against further receipt of waste materials after the stated date. Further, suitable barriers shall be installed at all gates or access points to adequately prevent the unauthorized dumping of solid waste at the closed facility.

(3) Within ten days after completion of final closure activities of a facility, the owner and operator shall submit to the executive director by registered mail:

(A) a certification, signed by an independent licensed professional engineer, verifying that final facility closure has been completed in accordance with the approved closure plan. The submittal to the executive director shall include all applicable documentation necessary for certification of final facility closure; and

(B) a request for voluntary revocation of the facility registration.

(m) Cost estimate for closure.

(1) The cost estimate must:

(A) equal the costs for closure of the facility, including disposition of the maximum inventories of all processed and unprocessed waste;

(B) be based on the costs of hiring a third party that is not affiliated with the owner or operator; and

(C) be based on a volume (cubic yard) and/or weight (pound, ton) measure for collection and disposition costs.

(2) An increase in the closure cost estimate and the amount of financial assurance provided under subsection (n) of this section must be made if changes to the facility conditions increase the maximum cost of closure at any time during the active life of the facility.

(3) A reduction in the closure cost estimate and the amount of financial assurance provided under subsection (n) of this section may be approved if the cost estimate exceeds the maximum cost of closure at any time during the operation of the facility. A reduction in the cost estimate and the financial assurance must be considered a modification and the owner or operator shall provide a detailed justification for the reduction of the closure cost estimate and the amount of financial assurance.

(n) Financial assurance. A copy of the documentation required to demonstrate financial assurance as specified in Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities) shall be submitted 60 days prior to the initial receipt of waste. Continuous financial assurance coverage for closure must be provided until all requirements of the final closure plan have been completed and the facility is determined to be closed in writing by the executive director.

(o) Site operating plan. This plan will provide general operating procedures for facility management for day-to-day operations at the facility. At a minimum, the site operating plan must include a description for how the items in §326.75 of this title (relating to Site Operating Plan) will be implemented. A facility that has an environmental management system that meets the minimum standards described in §90.30 of this title (relating to Minimum Standards for Environmental Management Systems) and is approved to operate under an environmental management system in accordance with §90.31 of this title (relating to Review of Incentive Applications for Environmental Management System), is not subject to site operating plan requirements while the authorization to operate under the environmental management system remains in place. In the event the executive director terminates authorization to operate under an environmental management system, the facility must comply with the site operating plan requirements within 90 days.

(p) The approved site operating plan, the final closure plan, and all other documents and plans required by this chapter shall become operational requirements and shall be considered a part of the operating record of the facility.

Any deviation from the registration, the incorporated plans, or any other documents associated with the registration is a violation of this chapter.

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§326.73. Registration Application Processing.

(a) Opportunity for public meeting and posting notice signs.

(1) The owner or operator shall provide notice of the opportunity to request a public meeting and post notice signs for all registration applications not later than 45 days after the executive director's receipt of the application in accordance with the procedures contained in §39.501(c) of this title (relating to Application for Municipal Solid Waste Permit) and by posting signs at the proposed site.

(2) The owner or operator and the commission shall hold a public meeting in the local area, prior to facility authorization, if a public meeting is required based on the criteria contained in §55.154(c) of this title (relating to Public Meetings).

(3) Notice of a public meeting shall be provided as specified in §39.501(e)(3) and (4) of this title. This section does not require the commission to respond to comments, and it does not create an opportunity for a contested case hearing.

(4) The owner, operator, or a representative authorized to make decisions and act on behalf of the owner or operator shall attend the public meeting. A public meeting conducted under this section is not a contested case hearing under the Texas Government Code, Chapter 2001 (Texas Administrative Procedure Act).

(5) At the owner's or operator's expense, a sign or signs must be posted at the site of the proposed facility declaring that the application has been filed and stating the manner in which the commission and owner or operator may be contacted for further information. Such signs must be provided by the owner or operator and must substantially meet the following requirements. Signs must:

(A) consist of dark lettering on a white background and must be no smaller than four feet by four feet with letters at least three inches in height and block printed capital lettering;

(B) be headed by the words "PROPOSED MEDICAL WASTE FACILITY;"

(C) include the words "REGISTRATION NO." and the number of the registration;

(D) include the words "for further information contact;"

(E) include the words "Texas Commission on Environmental Quality" and the address and telephone number of the appropriate permitting office;

(F) include the name of the owner or operator, and the address of the appropriate responsible official;

(G) include the telephone number of the owner or operator;

(H) remain in place and legible until the period for filing a motion to overturn has expired; and

(I) describe how persons affected may request that the executive director and applicant conduct a public meeting.

(6) Signs must be located within ten feet of every property line bordering a public highway, street, or road. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs, shall be required along any property line paralleling a public highway, street, or road. This paragraph's sign requirements do not apply to properties under the same ownership that are noncontiguous or separated by intervening public highway, street, or road, unless the property is part of the registered facility.

(7) The owner or operator shall also post signs at the facility in an alternative language when the alternative language requirements in §39.405(h)(2) of this title (relating to General Notice Provisions) are met. These signs must meet the location and frequency requirements of paragraph (6) of this subsection.

(8) The owner or operator shall provide a certification to the executive director that the sign posting was conducted according to the requirements of this section.

(9) The executive director may approve variances from the requirements of paragraphs (5) and (6) of this subsection if the owner or operator has demonstrated that it is not practical to comply with the specific requirements of those paragraphs and alternative sign posting plans proposed by the owner or operator are at least as effective in providing notice to the public. Approval from the executive director under this paragraph must be received before posting alternative signs for purposes of satisfying the requirements of this paragraph.

(b) Notice of final determination. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. In accordance with §50.133(b) of this title (relating to Executive Director Action on Application or WQMP Update), if the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision). The chief clerk shall mail this notice to the owner and operator, the public interest counsel and to other persons who timely filed public comment in response to public notice.

(c) Motion to overturn. The owner or operator, or a person affected may file with the chief clerk a motion to overturn the executive director's action on a registration application, under §50.139 of this title. The criteria regarding motions to overturn shall be explained in the public notices provided in accordance with Chapter 39 of this title (relating to Public Notice) and §50.133 of this title.

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§326.75. Site Operating Plan.

(a) Personnel functions.

(1) A description of functions and minimum qualifications for each category of key personnel to be employed at the facility and for the supervisory personnel in the chain of command;

(2) A description of the general instructions that the operating personnel shall follow concerning the operational requirements of this subchapter; and

(3) Procedures for the detection and prevention of the receipt of prohibited wastes; which must include:

(A) random inspections of packaging for incoming loads;

(B) records of all inspections; and

(C) training for appropriate facility personnel responsible for inspecting or observing loads to recognize prohibited waste.

(b) Waste acceptance. The applicant shall identify the sources and characteristics of medical wastes proposed to be received for storage and processing or disposal, the maximum amount of medical waste to be received daily, the maximum amount of medical waste to be stored, the maximum lengths of time

that medical waste is to remain at the facility (specify the maximum allowable period of time that unprocessed and processed wastes are to remain on-site), and the intended destination of the medical waste received at this facility. Medical waste facilities may not receive regulated hazardous waste as defined in §326.3(45) of this title (relating to Definitions). Materials accepted for recycling may only be accepted from health care-related facilities as long as the recyclable materials have not been mixed or come into contact with medical waste. Materials mixed or contacting medical waste shall be managed as medical waste.

(c) Facility-generated waste.

(1) All liquids resulting from the facility operations shall be disposed of in a manner that will not cause surface water or groundwater pollution. The owner or operator may send wastewater off-site to an authorized facility or shall provide for the treatment of wastewaters resulting from managing the waste or from cleaning and washing. Except as provided in subsection (b) of this section, the owner or operator shall provide a connection into a public sewer system, a septic system, or a small wastewater treatment plant. On-site wastewater treatment systems shall comply with Chapter 285 of this title (relating to On-site Sewage Facilities). The owner or operator shall obtain any permit or other approval required by state or local code for the system installed.

(2) Contaminated water shall be collected and contained until properly managed.

(3) Wastes generated by a facility must be processed or disposed at an authorized solid waste management facility.

(4) Off-site discharge of contaminated waters shall be made only after approval under the Texas Pollutant Discharge Elimination System authority.

(5) The owner or operator shall provide a copy of the authorization to discharge wastewater to a treatment facility permitted under Texas Water Code, Chapter 26.

(d) Storage requirements.

(1) All solid waste shall be stored in such a manner that it does not create a nuisance.

(2) Storage area(s) for source-separated or recyclable materials from medical waste facilities must be provided that are separate from solid waste processing areas. Control of odors, vectors, and windblown waste from the storage area shall be maintained.

(3) Containers must be maintained in a clean condition so that they do not constitute a nuisance. Containers to be mechanically handled must be designed to prevent spillage or leakage during storage, handling, or transport.

(4) If a stationary compactor is utilized, it shall be operated and maintained in such a way as not to create a public nuisance through material loss or spillage, odor, vector breeding or harborage, or other condition.

(e) Recordkeeping and reporting requirements.

(1) A copy of the registration, the approved registration application, and any other required plan or other related document shall be maintained at the medical waste facility at all times. These plans shall be made available for inspection by agency representatives or other interested parties. These documents shall be considered a part of the operating record for the facility.

(2) The owner or operator shall promptly record and retain in an operating record:

(A) all location-restriction demonstrations;

(B) inspection records and training procedures;

(C) closure plans, cost estimates, and financial assurance documentation relating to financial assurance for closure;

(D) copies of all correspondence and responses relating to the operation of the facility, modifications to the registration, approvals, and other matters pertaining to technical assistance; and

(E) all documents, manifests and any other document(s) as specified by the approved authorization or by the executive director.

(3) For signatories to reports, the following conditions apply.

(A) The owner or operator shall sign all reports and other information requested by the executive director as described in §305.128 of this title (relating to Signatories to Reports) and §305.44(a) of this title (relating to Signatories to Applications) or by a duly authorized representative of the owner or operator. A person is a duly authorized representative only if:

(i) the authorization is made in writing by the owner or operator as described in §305.44(a) of this title;

(ii) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity or for environmental matters for the owner or operator, such as the position of plant manager, environmental manager, or a position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

(iii) the authorization is submitted to the executive director.

(B) If an authorization under this section is no longer accurate because of a change in individuals or position, a new authorization satisfying the requirements of this section must be submitted to the executive director prior to, or together with, any reports, information, or applications to be signed by an authorized representative.

(C) Any person signing a report shall make the certification in §305.44(b) of this title.

(4) All information contained in the operating record shall be furnished upon request to the executive director and shall be made available for inspection by the executive director.

(5) The owner or operator shall retain all information contained within the operating record and the different plans required for the facility for the life of the facility.

(6) The executive director may set alternative schedules for recordkeeping and notification requirements as specified in paragraphs (1) - (5) of this subsection.

(7) Owners or operators of a medical waste processing facility accepting delivery of untreated medical waste for which a shipping document is required for processing shall ensure each of the following requirements are met:

(A) a shipping document accompanies the shipment, which designates the facility to receive the waste;

(B) the owner or operator signs the shipping document and immediately gives at least one copy of the signed shipping document to the transporter;

(C) the owner or operator retains one copy of the shipping document;

(D) within 45 days after the delivery, the treatment facility owner or operator sends a written or electronic copy of the shipping document to the generator that includes the total weight of waste received and a statement that the medical waste was treated in accordance with 25 TAC §1.136 (relating to Approved Methods of Treatment and Disposition).

(f) Fire protection.

(1) An adequate supply of water under pressure must be available for firefighting purposes.

(2) Firefighting equipment must be readily available.

(3) A fire protection plan shall be established, and all employees shall be trained in its contents and use. This fire protection plan shall describe the source of fire protection (a local fire department, fire hydrants, fire extinguishers, water tanks, water well, etc.), procedures for using the fire protection source, and employee training and safety procedures. The fire protection plan shall comply with local fire codes.

(g) Access control.

(1) Public access to all medical waste facilities shall be controlled by means of artificial barriers, natural barriers, or a combination of both, appropriate to protect human health and safety and the environment. Uncontrolled access to other operations located at a medical waste facility shall be prevented.

(2) The facility access road from a publicly owned roadway must be at least a two-lane gravel or paved road, designed for the expected traffic flow. Safe on-site access for all vehicles must be provided. The access road design must include adequate turning radii according to the vehicles that will utilize the facility and avoid disruption of normal traffic patterns. Vehicle parking must be provided for equipment, employees, and visitors. Safety bumpers at hoppers must be provided for vehicles. A positive means to control dust and mud must be provided.

(3) Access to the facility shall be controlled by a perimeter fence, consisting of a four-foot barbed wire fence or a six-foot chain-link fence or equivalent, and have lockable gates. An attendant shall be on-site during operating hours. The operating area and transport unit storage area shall be enclosed by walls or fencing.

(h) Unloading of waste.

(1) The unloading of solid waste shall be confined to as small an area as practical. An attendant shall be provided at all facilities to monitor all incoming

loads of waste. Appropriate signs shall also be used to indicate where vehicles are to unload. The owner or operator is not required to accept any solid waste that he/she determines will cause or may cause problems in maintaining full and continuous compliance with these sections.

(2) The unloading of waste in unauthorized areas is prohibited. The owner or operator shall ensure that any waste deposited in an unauthorized area will be removed immediately and managed properly.

(3) The unloading of prohibited wastes at the medical waste facility shall not be allowed. The owner or operator shall ensure that any prohibited waste will be returned immediately to the transporter or generator of the waste.

(i) Operating hours. A site operating plan must specify operating hours. The operating hours may be any time between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, unless otherwise approved by the executive director or commission for a registration.

(1) In addition to the requirements of this subsection, the authorization may include alternative operating hours of up to five days in a calendar-year period to accommodate special occasions, special purpose events, holidays, or other special occurrences.

(2) The agency regional office may allow additional temporary operating hours to address disaster or other emergency situations, or other unforeseen circumstances that could result in the disruption of waste management services in the area.

(3) The facility must record, in the site operating record, the dates, times, and duration when any alternative operating hours are utilized.

(j) Facility sign. Each facility shall conspicuously display at all entrances to the facility through which wastes are received, a sign measuring at least four feet by four feet with letters at least three inches in height stating the facility name; type of facility; the hours and days of operation; the authorization number of the facility; and facility rules. The posting of erroneous or misleading information shall constitute a violation of this section.

(k) Control of windblown material and litter. Windblown material and litter within the registration boundary shall be collected as necessary to minimize unhealthy, unsafe, or unsightly conditions.

(l) Facility access roads.

(1) All-weather roads shall be provided within the facility to the unloading area(s) designated for wet-weather operation. The tracking of mud and debris onto public roadways from the facility shall be minimized.

(2) Dust from on-site and other access roadways shall not become a nuisance to surrounding areas. A water source and necessary equipment or other means of dust control shall be provided.

(3) All on-site access roads owned or controlled by the owner or operator shall be maintained to minimize depressions, ruts, and potholes on a regular basis. For the maintenance of other access roadways not owned or controlled by the owner or operator, the owner or operator shall coordinate with the Texas Department of Transportation, county, and/or local governments with maintenance authority over the roads.

(m) Noise pollution and visual screening. The owner or operator of a transfer station shall provide screening or other measures to minimize noise pollution and adverse visual impacts.

(n) Overloading and breakdown.

(1) The design capacity of the facility shall not be exceeded during operation. The facility shall not accumulate solid waste in quantities that cannot be processed within such time as will preclude the creation of odors, insect breeding, or harborage of other vectors. If such accumulations occur, additional solid waste shall not be received until the adverse conditions are abated.

(2) If a significant work stoppage should occur at a solid waste processing facility due to a mechanical breakdown or other causes, the facility shall accordingly restrict the receiving of solid waste. Under such circumstances, incoming solid waste shall be diverted to an approved backup processing or disposal facility. If the work stoppage is anticipated to last long enough to create objectionable odors, insect breeding, or harborage of vectors, steps shall be taken to remove the accumulated solid waste from the facility to an approved backup processing or disposal facility.

(3) The owner or operator shall have alternative processing or disposal procedures for the solid waste in the event that the facility becomes inoperable for periods longer than 24 hours.

(o) Sanitation.

(1) The owner or operator shall provide potable water and sanitary facilities for all employees and visitors.

(2) At processing facilities, all working surfaces that come in contact with wastes shall be washed down on a weekly basis at the completion of processing. Processing facilities that operate on a continuous basis shall be swept daily and washed down at least twice per week.

(3) Wash waters shall not be accumulated on site without proper treatment to prevent the creation of odors or an attraction to vectors.

(4) All wash waters shall be collected and disposed of in an authorized manner.

(p) Ventilation and air pollution control. All facilities and air pollution abatement devices must obtain authorization, under Texas Health and Safety Code (THSC), Chapter 382 (Texas Clean Air Act) and Chapter 106 or 116 of this title (relating to Permits by Rule; and Control of Air Pollution by Permits for New Construction or Modification), from the Air Permits Division prior to the commencement of construction, except as authorized in THSC, §382.004. Additionally, all facilities and air pollution abatement devices must operate in compliance with all applicable air related rules including Chapter 101 of this title (relating to General Air Quality Rules) related to prevention of nuisance odors, minimizing maintenance, startup and shutdown emissions, and emission event reporting and recordkeeping.

(q) Health and safety. Facility personnel shall be trained in the appropriate sections of the facility's health and safety plan.

(r) Disposal of treated medical waste. Medical wastes that have been treated in accordance with the provisions of 25 TAC §1.136 may be managed as routine municipal solid waste unless otherwise specified in paragraphs (1) - (5) of this subsection.

(1) Incinerator ash shall be disposed of in a permitted landfill in accordance with Chapter 330 of this title (relating to Municipal Solid Waste).

(2) Treated microbiological waste, blood, blood products, body fluids, laboratory specimens of blood and tissue, and animal bedding may be disposed of in a permitted landfill. Any markings that identify the waste as a medical waste shall be covered with a label that identifies the waste as treated medical waste. The identification of the waste as treated may be accomplished by the use of color-coded, disposable containers for the treated waste or by a label that states that the contents of the disposable container have been treated in accordance with the provisions of 25 TAC §1.136.

(3) Treated carcasses and body parts of animals designated as a medical waste may, after treatment, be disposed of in a permitted landfill in

accordance with Chapter 330 of this title. The collection and transportation of these wastes shall conform to the applicable local ordinance or rule, if such ordinance or rule is more stringent than this subsection.

(4) Treated recognizable human body parts, tissues, fetuses, organs, and the products of human abortions, spontaneous or induced, shall not be disposed of in a municipal solid waste landfill. These items shall be disposed of in accordance with the provisions of 25 TAC §1.136(a)(4).

(5) Sharps treated and containerized with one of the approved methods as described under 25 TAC §1.136(a)(5) shall be disposed of in a permitted landfill in accordance with Chapter 330 of this title. Unused sharps shall be disposed of as treated sharps.

Adopted April 27, 2016

Effective May 26, 2016

§326.77. Duration, Limits and Additional Registration Conditions.

(a) The executive director shall, after review of any application for registration, approve or deny an application. This action shall be based on whether the application meets the requirements of this chapter.

(b) A registration is normally issued for the life of the facility but may be revoked or modified at any time if the operating conditions do not meet the minimum standards set forth in this chapter or for any other good cause.

(c) A registration is issued to a specific person (see definition of "Person" contained in §3.2 of this title (relating to Definitions)) and may not be transferred from one person to another without complying with §305.62 and §305.70 of this title (relating to Amendments; and Municipal Solid Waste Permit and Registration Modifications).

(d) Except for transporters and mobile treatment units, a registration is attached to the realty to which it pertains and may not be transferred from one facility to another.

(e) If a registered facility does not commence physical construction within two years of issuance of a registration or within two years of the conclusion of the appeals process, whichever is longer, the registration shall automatically terminate and will no longer be effective.

(f) A registration shall be considered to be a permit for purposes of revocation and denial under Chapter 305 of this title (relating to Consolidated Permits).

(g) The owner or operator may file with the chief clerk a motion to overturn the executive director's denial of a registration under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision).

(h) If at any time during the life of the facility the owner or operator becomes aware of any condition in the registration that necessitates a change to accommodate new technology or improved methods or that makes it impractical to keep the facility in compliance, the owner or operator shall submit to the executive director requested changes to the registration in accordance with §305.70 of this title and must be approved prior to their implementation.

(i) The owner or operator shall obtain and submit certification by a Texas-licensed professional engineer that the facility has been constructed as designed in accordance with the issued registration and in general compliance with the regulations prior to initial operation. The owner or operator shall maintain that certification on-site for inspection.

(j) After all initial construction activity has been completed and prior to accepting any solid waste, the owner or operator shall contact the executive director and region office in writing and request a pre-opening inspection. A pre-opening inspection shall be conducted by the executive director within 14 days of notification by the owner or operator that all construction activities have been completed, accompanied by representatives of the owner or operator and the engineer.

(k) The facility shall not accept solid waste until the executive director has confirmed in writing that all applicable submissions required by the registration and this chapter have been received and found to be acceptable, and that construction is in compliance with the registration. If the executive director has not provided a written or verbal response within 14 days of completion of the pre-opening inspection the facility shall be considered approved for acceptance of waste.

Adopted April 27, 2016

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