

**SUBCHAPTER A: GENERAL INFORMATION**  
**§§330.1, 330.3, 330.5, 330.7, 330.9, 330.11, 330.13, 330.15,**  
**330.17, 330.19, 330.21, 330.23, 330.25**  
**Effective May 26, 2016**

**§330.1. Purpose and Applicability.**

(a) The regulations promulgated in this chapter cover aspects of municipal solid waste (MSW) management and air emissions from MSW landfills and transfer stations under the authority of the commission and are based primarily on the stated purpose of Texas Health and Safety Code, Chapter 361 and Chapter 382. The provisions of this chapter apply to any person as defined in §3.2 of this title (relating to Definitions) involved in any aspect of the management and control of MSW and MSW facilities including, but not limited to, storage, collection, handling, transportation, processing, and disposal. Furthermore, these regulations apply to any person that by contract, agreement, or otherwise arranges to process, store, or dispose of, or arranges with a transporter for transport to process, store, or dispose of, solid waste owned or possessed by the person, or by any other person or entity. The comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions) are effective 20 days after they are filed with the Office of the Secretary of State.

(1) Permits and registrations, issued by the commission and its predecessors, that existed before the 2006 Revisions became effective, remain valid until suspended or revoked except as expressly provided otherwise in this chapter. Facilities may operate under existing permits and registrations subject to: requirements in the 2006 Revisions, which expressly supersede provisions contained in existing authorizations or require revisions to existing authorizations; and those requirements mandated by the United States Environmental Protection Agency in 40 Code of Federal Regulations (CFR) Parts 257 and 258, as amended, which implement certain requirements of Resource Conservation and Recovery Act, Subtitle D. For those federally mandated requirements and the equivalent state requirements, the effective dates listed in 40 CFR Parts 257 and 258, as amended, shall apply. For those federally mandated requirements, the permittee is under an obligation to apply for a permit change in accordance with §305.62 of this title (relating to Amendments) or §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications), as applicable, to incorporate the required standard. The application shall be submitted no later than six months from the effective date of the required standard.

(2) Applications for new permits and major amendments to existing permits that are administratively complete and registration applications for which the executive director has completed a technical review, as of the effective date of the

2006 Revisions, shall be considered under the former rules of this chapter unless the applicant elects otherwise. Existing authorizations are subject to the 2006 Revisions, which expressly supersede provisions contained in existing authorizations or require modifications of existing authorizations regardless of whether a major amendment is being considered for the same facility under the former rules. For new permits and major amendments to increase solid waste disposal capacity, only complete applications (Parts I - IV), which are submitted and declared administratively complete before the effective date of the 2006 Revisions, may be considered under existing Chapter 330 rules. Such applications are not subject to §305.127(4)(B) of this title (relating to Conditions to be Determined for Individual Permits) and the owner or operator must submit the modifications required by the 2006 Revisions within one year after the commission's decision on the application has become final and appealable, unless a longer period of time is specified in the rules.

(3) Authorizations, other than permits and registrations, that existed before the 2006 Revisions became effective shall comply with the 2006 Revisions within 120 days of the 2006 Revisions becoming effective unless expressly provided otherwise in this chapter. These authorizations include notifications, exemptions, permits by rule, and registrations by rule.

(4) Authorizations, other than permits and registrations, that had not been claimed or did not exist before the 2006 Revisions became effective shall comply with the 2006 Revisions.

(5) Applications for modifications or for amendments that do not increase solid waste disposal capacity that are filed before the 2006 Revisions become effective, or filed within 180 days after the 2006 Revisions become effective, are subject to the former rules. Such applications are not subject to §305.127(4)(B) of this title, and the owner or operator must submit the modifications required by the 2006 Revisions within 180 days after the effective date of the 2006 Revisions, unless a longer period of time is specified in the rules.

(b) The commission at its discretion, may include one or more different types of units in a single permit if the units are located at the same facility with the exception of a facility authorized by an MSW permit by rule. Persons shall seek separate authorizations at a facility that qualifies for an MSW permit by rule.

(c) This chapter does not apply to any person that prepares sewage sludge or domestic septage, fires sewage sludge in a sewage sludge incinerator, applies sewage sludge or domestic septage to the land, or to the owner/operator of a surface disposal site as applicable under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation); to sewage sludge or domestic septage applied to the land or placed on a surface disposal site, to sewage sludge fired in a sewage sludge incinerator, to land where sewage sludge or domestic septage is applied to a

surface disposal site or to a sewage sludge incinerator as applicable under Chapter 312 of this title; any person that transports sewage sludge, water treatment sludge, domestic septage, chemical toilet waste, grit trap waste, or grease trap waste; to any person that applies water treatment sludge for disposal in a land application unit, as defined in §312.121 of this title (relating to Purpose, Scope, and Standards) to water treatment sludge that is disposed of in a land application unit, as defined in §312.121 of this title. Persons managing such wastes shall comply with the requirements of Chapter 312 of this title.

(d) This chapter does not apply to any person that composts MSW in accordance with the requirements of Chapter 332 of this title (relating to Composting), except for those persons that must apply for a permit in accordance with §332.3(a) of this title (relating to Applicability). Those persons that must submit a permit application for a compost operation shall follow the applicable requirements of Subchapter B of this chapter (relating to Permit and Registration Application Procedures).

(e) This chapter does not apply to any person that manages medical waste in accordance with the requirements of Chapter 326 of this title (relating to Medical Waste Management). Persons disposing of medical waste at municipal solid waste landfills shall comply with applicable provisions of this chapter. The medical waste provisions being relocated from this chapter to Chapter 326 of this title will remain in effect and continue to apply to permits, registrations, and registrations by rule issued under this chapter until the later of two years from the effective date of Chapter 326 of this title or until a final decision is made on a timely request for an authorization to be updated to comply with Chapter 326 of this title. Permits, registrations, and registrations by rule issued under the existing Chapter 330 rules must be updated by filing a new application within two years or upon renewal to comply with Chapter 326 of this title. The executive director is authorized to extend this deadline based on an authorized entity making a request supported by good cause. A person who has an application for the management of medical waste pending before the effective date of Chapter 326 of this title shall be considered under the former Chapter 330 rules unless the applicant elects otherwise.

Adopted April 27, 2016

Effective May 26, 2016

### **§330.3. Definitions.**

Unless otherwise noted, all terms contained in this section are defined by their plain meaning. This section contains definitions for terms that appear throughout this chapter. Additional definitions may appear in the specific section to which they apply. The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) **100-year flood**--A flood that has a 1.0% or greater chance of recurring in any given year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(2) **Active disposal area**--All landfill working faces and areas covered with daily and alternative daily cover.

(3) **Active life**--The period of operation beginning with the initial receipt of solid waste and ending at certification/completion of closure activities in accordance with §§330.451 - 330.459 of this title (relating to Closure and Post-Closure).

(4) **Active portion**--That part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with §§330.451 - 330.459 of this title (relating to Closure and Post-Closure).

(5) **Airport**--A public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(6) **Ancillary equipment**--Any device that is used to distribute, meter, or control the flow of solid waste from its point of generation to a storage or processing tank(s), between solid waste storage and processing tanks to a point of disposal on-site, or to a point of shipment for disposal off-site. Such devices include, but are not limited to, piping, fittings, flanges, valves, and pumps.

(7) **Animal crematory**--A facility for the incineration of animal remains that meets the following criteria:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of the emission of the combustion products.

(8) **Aquifer**--A geological formation, group of formations, or portion of a formation capable of yielding significant quantities of groundwater to wells or springs.

(9) **Areas susceptible to mass movements**--Areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the

municipal solid waste landfill unit, because of natural or man-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluctuation, block sliding, and rock fall.

(10) **Asbestos-containing materials**--Include the following.

(A) Category I nonfriable asbestos-containing material means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1.0% asbestos as determined using the method specified in Appendix A, Subpart F, 40 Code of Federal Regulations (CFR) Part 763, §1, Polarized Light Microscopy.

(B) Category II nonfriable asbestos-containing material means any material, excluding Category I nonfriable asbestos-containing material, containing more than 1.0% asbestos as determined using the methods specified in Appendix A, Subpart F, 40 CFR Part 763, §1, Polarized Light Microscopy, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

(C) Friable asbestos-containing material means any material containing more than 1.0% asbestos that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

(D) Nonfriable asbestos-containing material means any material containing more than 1.0% asbestos that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

(11) **ASTM**--The American Society for Testing and Materials.

(12) **Battery**--An electrochemical device that generates electric current by converting chemical energy. Its essential components are positive and negative electrodes made of more or less electrically conductive materials, a separate medium, and an electrolyte. There are four major types:

- (A) primary batteries (dry cells);
- (B) storage or secondary batteries;
- (C) nuclear and solar cells or energy converters; and
- (D) fuel cells.

(13) **Battery acid (also known as electrolyte acid)**--A solution of not more than 47% sulfuric acid in water suitable for use in storage batteries, which is water white, odorless, and practically free from iron.

(14) **Battery retailer**--A person or business location that sells lead-acid batteries to the general public, without restrictions to limit purchases to institutional or industrial clients only.

(15) **Battery wholesaler**--A person or business location that sells lead-acid batteries directly to battery retailers, to government entities by contract sale, or to large-volume users, either directly or by contract sale.

(16) **Bird hazard**--An increase in the likelihood of bird/aircraft collisions that may cause damage to an aircraft or injury to its occupants.

(17) **Boiler**--An enclosed device using controlled flame combustion and having the following characteristics.

(A) The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases.

(B) The unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design:

(i) process heaters (units that transfer energy directly to a process stream); and

(ii) fluidized bed combustion units.

(C) While in operation, the unit must maintain a thermal energy recovery efficiency of at least 60%, calculated in terms of the recovered energy compared with the thermal value of the fuel.

(D) The unit must export and utilize at least 75% of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. Examples of internal

use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps.

(18) **Brush**--Cuttings or trimmings from trees, shrubs, or lawns and similar materials.

(19) **Buffer zone**--A zone free of municipal solid waste processing and disposal activities within and adjacent to the facility boundary on property owned or controlled by the owner or operator.

(20) **Citizens' collection station**--A facility established for the convenience and exclusive use of residents (not commercial or industrial users or collection vehicles), except that in small communities where regular collections are not available, small quantities of commercial waste may be deposited by the generator of the waste. The facility may consist of one or more storage containers, bins, or trailers.

(21) **Class 1 wastes**--Any industrial solid waste or mixture of industrial solid wastes that because of its concentration, or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, or may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or disposed of or otherwise managed, as further defined in §335.505 of this title (relating to Class 1 Waste Determination).

(22) **Class 2 wastes**--Any individual solid waste or combination of industrial solid waste that are not described as Hazardous, Class 1, or Class 3 as defined in §335.506 of this title (relating to Class 2 Waste Determination).

(23) **Class 3 wastes**--Inert and essentially insoluble industrial solid waste, usually including, but not limited to, materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable, as further defined in §335.507 of this title (relating to Class 3 Waste Determination).

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

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

(26) **Commence physical construction**--The initiation of physical on-site construction on a site for which an application to authorize a municipal solid

waste management unit is pending, the construction of which requires approval of the commission. Construction of actual waste management units and necessary appurtenances requires approval of the commission, but other features not specific to waste management are allowed without commission approval.

(27) **Commercial solid waste**--All types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

(28) **Compacted waste**--Waste that has been reduced in volume by a collection vehicle or other means including, but not limited to, dewatering, composting, incineration, and similar processes, with the exception of waste that has been reduced in volume by a small, in-house compactor device owned and/or operated by the generator of the waste.

(29) **Composite liner**--A liner system consisting of two components: the upper component must consist of a minimum 30-mil geomembrane liner or minimum 60-mil high-density polyethylene, and the lower component must consist of at least a two-foot layer of re-compacted soil deposited in lifts with a hydraulic conductivity of no more than  $1 \times 10^{-7}$  centimeters/second. The geomembrane liner component must be installed in direct and uniform contact with the compacted soil component.

(30) **Compost**--The stabilized product of the decomposition process that is used or sold for use as a soil amendment, artificial top soil, growing medium amendment, or other similar uses.

(31) **Composting**--The controlled biological decomposition of organic materials through microbial activity.

(32) **Conditionally exempt small-quantity generator**--A person that generates no more than 220 pounds of hazardous waste in a calendar month.

(33) **Construction or demolition waste**--Waste resulting from construction or demolition projects; includes all materials that are directly or indirectly the by-products of construction work or that result from demolition of buildings and other structures, including, but not limited to, paper, cartons, gypsum board, wood, excelsior, rubber, and plastics.

(34) **Container**--Any portable device in which a material is stored, transported, or processed.

(35) **Contaminate**--To alter the chemical, physical, biological, or radiological integrity of ground or surface water by man-made or man-induced means.

(36) **Contaminated water**--Leachate, gas condensate, or water that has come into contact with waste.

(37) **Controlled burning**--The combustion of solid waste with control of combustion air to maintain adequate temperature for efficient combustion; containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and control of the emission of the combustion products, i.e., incineration in an incinerator.

(38) **Discard**--To abandon a material and not use, re-use, reclaim, or recycle it. A material is abandoned by being disposed of; burned or incinerated (except where the material is being burned as a fuel for the purpose of recovering usable energy); or physically, chemically, or biologically treated (other than burned or incinerated) in lieu of or prior to being disposed.

(39) **Discharge**--Includes deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release, or to allow, permit, or suffer any of these acts or omissions.

(40) **Discharge of dredged material**--Any addition of dredged material into the waters of the United States. The term includes, without limitation, the addition of dredged material to a specified disposal site located in waters of the United States and the runoff or overflow from a contained land or water disposal area.

(41) **Discharge of fill material**--The addition of fill material into waters of the United States. The term generally includes placement of fill necessary to the construction of any structure in waters of the United States: the building of any structure or improvement requiring rock, sand, dirt, or other inert material for its construction; the building of dams, dikes, levees, and riprap.

(42) **Discharge of pollutant**--Any addition of any pollutant to navigable waters from any point source or any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source.

(43) **Displacement**--The measured or estimated distance between two formerly adjacent points situated on opposite walls of a fault (synonymous with net slip).

(44) **Disposal**--The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

(45) **Dredged material**--Material that is excavated or dredged from waters of the United States.

(46) **Drinking-water intake**--The point at which water is withdrawn from any water well, spring, or surface water body for use as drinking water for humans, including standby public water supplies.

(47) **Elements of nature**--Rainfall, snow, sleet, hail, wind, sunlight, or other natural phenomenon.

(48) **Endangered or threatened species**--Any species listed as such under the Federal Endangered Species Act, §4, 16 United States Code, §1536, as amended or under the Texas Endangered Species Act.

(49) **Essentially insoluble**--Any material that, if representatively sampled and placed in static or dynamic contact with deionized water at ambient temperature for seven days, will not leach any quantity of any constituent of the material into the water in excess of the maximum contaminant levels in 40 Code of Federal Regulations (CFR) Part 141, Subparts B and G, and 40 CFR Part 143 for total dissolved solids.

(50) **Existing municipal solid waste landfill unit**--Any municipal solid waste landfill unit that received solid waste as of October 9, 1993.

(51) **Experimental project**--Any new proposed method of managing municipal solid waste, including resource and energy recovery projects, that appears to have sufficient merit to warrant commission approval.

(52) **Facility**--All contiguous land and structures, other appurtenances, and improvements on the land used for the storage, processing, or disposal of solid waste.

(53) **Fault**--A fracture or a zone of fractures in any material along which strata, rocks, or soils on one side have been displaced with respect to those on the other side.

(54) **Fill material**--Any material used for the primary purpose of filling an excavation.

(55) **Floodplain**--The lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood.

(56) **Garbage**--Solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products.

(57) **Gas condensate**--The liquid generated as a result of any gas recovery process at a municipal solid waste facility.

(58) **Generator**--Any person, by site or location, that produces solid waste to be shipped to any other person, or whose act or process produces a solid waste or first causes it to become regulated.

(59) **Grease trap waste**--Material collected in and from a grease interceptor in the sanitary sewer service line of a commercial, institutional, or industrial food service or processing establishment, including the solids resulting from dewatering processes.

(60) **Grit trap waste**--Grit trap waste includes waste from interceptors placed in the drains prior to entering the sewer system at maintenance and repair shops, automobile service stations, car washes, laundries, and other similar establishments.

(61) **Groundwater**--Water below the land surface in a zone of saturation.

(62) **Hazardous waste**--Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 United States Code, §§6901 *et seq.*, as amended.

(63) **Holocene**--The most recent epoch of the Quaternary Period, extending from the end of the Pleistocene Epoch to the present.

(64) **Household waste**--Any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas); does not include brush.

(65) **Incinerator**--Any enclosed device that:

(A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace, as defined in §335.1 of this title (relating to Definitions); or

(B) meets the definition of infrared incinerator or plasma arc incinerator.

(66) **Industrial solid waste**--Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations.

(67) **Inert material**--A natural or man-made nonputrescible, nonhazardous material that is essentially insoluble, usually including, but not limited to, soil, dirt, clay, sand, gravel, brick, glass, concrete with reinforcing steel, and rock.

(68) **Infrared incinerator**--Any enclosed device that uses electric-powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and is not listed as an industrial furnace as defined in §335.1 of this title (relating to Definitions).

(69) **Injection well**--A well into which fluids are injected.

(70) **In situ**--In natural or original position.

(71) **Karst terrain**--An area where karst topography, with its characteristic surface and/or subterranean features, is developed principally as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terrains include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

(72) **Lateral expansion**--A horizontal expansion of the waste boundaries of an existing municipal solid waste landfill unit.

(73) **Land application of solid waste**--The disposal or use of solid waste (including, but not limited to, sludge or septic tank pumpings or mixture of shredded waste and sludge) in which the solid waste is applied within three feet of the surface of the land.

(74) **Land treatment unit**--A solid waste management unit at which solid waste is applied onto or incorporated into the soil surface and that is not a

corrective action management unit; such units are disposal units if the waste will remain after closure.

(75) **Landfill**--A solid waste management unit where solid waste is placed in or on land and which is not a pile, a land treatment unit, a surface impoundment, an injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(76) **Landfill cell**--A discrete area of a landfill.

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

(78) **Leachate**--A liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

(79) **Lead acid battery**--A secondary or storage battery that uses lead as the electrode and dilute sulfuric acid as the electrolyte and is used to generate electrical current.

(80) **License**--

(A) A document issued by an approved county authorizing and governing the operation and maintenance of a municipal solid waste facility used to process, treat, store, or dispose of municipal solid waste, other than hazardous waste, in an area not in the territorial limits or extraterritorial jurisdiction of a municipality.

(B) An occupational license as defined in Chapter 30 of this title (relating to Occupational Licenses and Registrations).

(81) **Liquid waste**--Any waste material that is determined to contain "free liquids" as defined by United States Environmental Protection Agency (EPA) Method 9095 (Paint Filter Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication Number SW-846).

(82) **Litter**--Rubbish and putrescible waste.

(83) **Low volume transfer station**--A transfer station used for the storage of collected household waste limited to a total storage capacity of 40 cubic yards located in an unincorporated area that is not within the extraterritorial jurisdiction of a city.

(84) **Lower explosive limit**--The lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25 degrees Celsius and atmospheric pressure.

(85) **Medical waste**--Treated and untreated special waste from health care-related facilities that is comprised of animal waste, bulk blood, bulk human blood, bulk human body fluids, microbiological waste, pathological waste, and sharps as those terms are defined in 25 TAC §1.132 (relating to Definitions) from the sources specified in 25 TAC §1.134 (relating to Application), as well as regulated medical waste as defined in 49 Code of Federal Regulations §173.134(a)(5), except that the term does not include medical waste produced on a farm or ranch as defined in 34 TAC §3.296(f) (relating to Agriculture, Animal Life, Feed, Seed, Plants, and Fertilizer), nor does the term include artificial, nonhuman materials removed from a patient and requested by the patient, including, but not limited to, orthopedic devices and breast implants. Health care-related facilities do not include:

(A) single or multi-family dwellings; and

(B) hotels, motels, or other establishments that provide lodging and related services for the public.

(86) **Monofill**--A landfill or landfill cell into which only one type of waste is placed.

(87) **Municipal hazardous waste**--Any municipal solid waste or mixture of municipal solid wastes that has been identified or listed as a hazardous waste by the administrator, United States Environmental Protection Agency.

(88) **Municipal solid waste**--Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste.

(89) **Municipal solid waste facility**--All contiguous land, structures, other appurtenances, and improvements on the land used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and may consist of several processing, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(90) **Municipal solid waste landfill unit**--A discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 Code of Federal Regulations §257.2. A municipal solid waste (MSW) landfill unit

also may receive other types of Resource Conservation and Recovery Act Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small-quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. An MSW landfill unit may be a new MSW landfill unit, an existing MSW landfill unit, a vertical expansion, or a lateral expansion.

(91) **New facility**--A municipal solid waste facility that has not begun construction.

(92) **Nonpoint source**--Any origin from which pollutants emanate in an unconfined and unchanneled manner, including, but not limited to, surface runoff and leachate seeps.

(93) **Non-regulated asbestos-containing material**--Non-regulated asbestos-containing material as defined in 40 Code of Federal Regulations Part 61. This is asbestos material in a form such that potential health risks resulting from exposure to it are minimal.

(94) **Notification**--The act of filing information with the commission for specific solid waste management activities that do not require a permit or a registration, as determined by this chapter.

(95) **Nuisance**--Municipal solid waste that is stored, processed, or disposed of in a manner that causes the pollution of the surrounding land, the contamination of groundwater or surface water, the breeding of insects or rodents, or the creation of odors adverse to human health, safety, or welfare. A nuisance is further set forth in Texas Health and Safety Code, Chapters 341 and 382; Texas Water Code, Chapter 26; and any other applicable regulation or statute.

(96) **Open burning**--The combustion of solid waste without:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of the emission of the combustion products.

(97) **Operate**--To conduct, work, run, manage, or control.

(98) **Operating hours**--The hours when the facility is open to receive waste, operate heavy equipment, and transport materials on- or off-site.

(99) **Operating record**--All plans, submittals, and correspondence for a municipal solid waste facility required under this chapter; required to be maintained at the facility or at a nearby site acceptable to the executive director.

(100) **Operation**--A municipal solid waste (MSW) site or facility is considered to be in operation from the date that solid waste is first received or deposited at the MSW site or facility until the date that the site or facility is properly closed in accordance with this chapter.

(101) **Operator**--The person(s) responsible for operating the facility or part of a facility.

(102) **Owner**--The person that owns a facility or part of a facility.

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

(104) **Physical construction**--The first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, the laying of underground pipework, or any work beyond the stage of excavation. Physical construction does not include land preparation, such as clearing, grading, excavating, and filling; nor does it include the installation of roads and/or walkways. Physical construction includes issuance of a building or other construction permit, provided that permanent construction commences within 180 days of the date that the building permit was issued.

(105) **Plasma arc incinerator**--Any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and not listed as an industrial furnace as defined by ' 335.1 of this title (relating to Definitions).

(106) **Point of compliance**--A vertical surface located no more than 500 feet from the hydraulically downgradient limit of the waste management unit boundary, extending down through the uppermost aquifer underlying the regulated units, and located on land owned by the owner of the facility.

(107) **Point source**--Any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, or discrete fissure from which pollutants are or may be discharged.

(108) **Pollutant**--Contaminated dredged spoil, solid waste, contaminated incinerator residue, sewage, sewage sludge, munitions, chemical wastes, or biological materials discharged into water.

(109) **Pollution**--The man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of an aquatic ecosystem.

(110) **Polychlorinated biphenyl (PCB)**--Any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances that contains such substance.

(111) **Polychlorinated biphenyl (PCB) waste(s)**--Those PCBs and PCB items that are subject to the disposal requirements of 40 Code of Federal Regulations (CFR) Part 761. Substances that are regulated by 40 CFR Part 761 include, but are not limited to: PCB articles, PCB article containers, PCB containers, PCB-contaminated electrical equipment, PCB equipment, PCB transformers, recycled PCBs, capacitors, microwave ovens, electronic equipment, and light ballasts and fixtures.

(112) **Poor foundation conditions**--Areas where features exist, indicating that a natural or man-induced event may result in inadequate foundation support for the structural components of a municipal solid waste landfill unit.

(113) **Population equivalent**--The hypothetical population that would generate an amount of solid waste equivalent to that actually being managed based on a generation rate of five pounds per capita per day and applied to situations involving solid waste not necessarily generated by individuals. It is assumed, for the purpose of these sections, that the average volume per ton of waste entering a municipal solid waste disposal facility is three cubic yards.

(114) **Post-consumer waste**--A material or product that has served its intended use and has been discarded after passing through the hands of a final user. For the purposes of this subchapter, the term does not include industrial or hazardous waste.

(115) **Premises**--A tract of land with the buildings thereon, or a building or part of a building with its grounds or other appurtenances.

(116) **Process to further reduce pathogens**--The process to further reduce pathogens as described in 40 Code of Federal Regulations Part 503, Appendix B.

(117) **Processing**--Activities including, but not limited to, the extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of waste, designed to change the physical, chemical, or biological character or composition of any waste to neutralize such waste, or to

recover energy or material from the waste, or render the waste safer to transport, store, dispose of, or make it amenable for recovery, amenable for storage, or reduced in volume.

(118) **Public highway**--The entire width between property lines of any road, street, way, thoroughfare, bridge, public beach, or park in this state, not privately owned or controlled, if any part of the road, street, way, thoroughfare, bridge, public beach, or park is opened to the public for vehicular traffic, is used as a public recreational area, or is under the state's legislative jurisdiction through its police power.

(119) **Putrescible waste**--Organic wastes, such as garbage, wastewater treatment plant sludge, and grease trap waste, that are capable of being decomposed by microorganisms with sufficient rapidity as to cause odors or gases or are capable of providing food for or attracting birds, animals, and disease vectors.

(120) **Qualified groundwater scientist**--A licensed geoscientist or licensed engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university programs that enable the individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action.

(121) **Radioactive waste**--Waste that requires specific licensing under 25 TAC Chapter 289 (relating to Radiation Control), and the rules adopted by the commission under the Texas Health and Safety Code.

(122) **Recyclable material**--A material that has been recovered or diverted from the nonhazardous waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Recyclable material is not solid waste. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

(123) **Recycling**--A process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials in the production of new products. Except for mixed municipal solid waste composting, that is, composting of the typical mixed solid waste stream generated by residential,

commercial, and/or institutional sources, recycling includes the composting process if the compost material is put to beneficial use.

(124) **Refuse**--Same as rubbish.

(125) **Registration**--The act of filing information with the commission for review and approval for specific solid waste management activities that do not require a permit, as determined by this chapter.

(126) **Regulated asbestos-containing material**--Regulated asbestos-containing material as defined in 40 Code of Federal Regulations Part 61, as amended, includes: friable asbestos material, Category I nonfriable asbestos-containing material that has become friable; Category I nonfriable asbestos-containing material that will be or has been subjected to sanding, grinding, cutting, or abrading; or Category II nonfriable asbestos-containing material that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations.

(127) **Regulated hazardous waste**--A solid waste that is a hazardous waste as defined in 40 Code of Federal Regulations (CFR) §261.3 and that is not excluded from regulation as a hazardous waste under 40 CFR §261.4(b), or that was not generated by a conditionally exempt small-quantity generator.

(128) **Resource recovery**--The recovery of material or energy from solid waste.

(129) **Resource recovery facility**--A solid waste processing facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(130) **Rubbish**--Nonputrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, brush, or similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, and similar materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

(131) **Run-off**--Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(132) **Run-on**--Any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(133) **Salvaging**--The controlled removal of waste materials for utilization, recycling, or sale.

(134) **Saturated zone**--That part of the earth's crust in which all voids are filled with water.

(135) **Scavenging**--The uncontrolled and unauthorized removal of materials at any point in the solid waste management system.

(136) **Scrap tire**--Any tire that can no longer be used for its original intended purpose.

(137) **Seasonal high water level**--The highest measured or calculated water level in an aquifer during investigations for a permit application and/or any groundwater characterization studies at a facility.

(138) **Septage**--The liquid and solid material pumped from a septic tank, cesspool, or similar sewage treatment system.

(139) **Site**--Same as facility.

(140) **Site development plan**--A document, prepared by the design engineer, that provides a detailed design with supporting calculations and data for the development and operation of a solid waste site.

(141) **Site operating plan**--A document, prepared by the design engineer in collaboration with the facility operator, that provides general instruction to facility management and operating personnel throughout the operating life of the facility in a manner consistent with the engineer=s design and the commission=s regulations to protect human health and the environment and prevent nuisances.

(142) **Site operator**--The holder of, or the applicant for, an authorization (or license) for a municipal solid waste facility.

(143) **Sludge**--Any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water-supply treatment plant, or air pollution control facility, exclusive of the treated effluent from a wastewater treatment plant.

(144) **Small municipal solid waste landfill**--A municipal solid waste landfill unit (Type IAE) at which less than 20 tons of authorized types of waste are disposed of daily based on an annual average and/or a Type IVAE landfill unit at which less than 20 tons of authorized types of waste are disposed of daily based on an annual average. A Type IAE landfill permit may include additional authorization

for a separate Type IVAE landfill unit. If a permit contains dual authorization for Type IAE and Type IVAE landfill units, the permit must designate separate areas for the units and where all disposal cells will be located within each unit.

(145) **Solid waste**--Garbage, rubbish, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Texas Water Code, Chapter 26;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 United States Code, §§6901 *et seq.*).

(146) **Solid waste management unit**--A landfill, surface impoundment, waste pile, furnace, incinerator, kiln, injection well, container, drum, salt dome waste containment cavern, land treatment unit, tank, container storage area, or any other structure, vessel, appurtenance, or other improvement on land used to manage solid waste.

(147) **Source-separated recyclable material**--Recyclable material from residential, commercial, municipal, institutional, recreational, industrial, and other community activities, that at the point of generation has been separated, collected, and transported separately from municipal solid waste (MSW), or transported in the same vehicle as MSW, but in separate containers or compartments. Source-separation does not require the recovery or separation of non-recyclable components that are integral to a recyclable product, including:

(A) the non-recyclable components of white goods, whole computers, whole automobiles, or other manufactured items for which dismantling and separation of recyclable from non-recyclable components by the generator are impractical, such as insulation or electronic components in white goods;

(B) source-separated recyclable material rendered unmarketable by damage during collection, unloading, and sorting, such as broken recyclable glass; and

(C) tramp materials, such as:

(i) glass from recyclable metal windows;

(ii) nails and roofing felt attached to recyclable shingles;

(iii) nails and sheetrock attached to recyclable lumber generated through the demolition of buildings; and

(iv) pallets and packaging materials.

(148) **Special waste**--Any solid waste or combination of solid wastes that because of its quantity, concentration, physical or chemical characteristics, or biological properties requires special handling and disposal to protect the human health or the environment. If improperly handled, transported, stored, processed, or disposed of or otherwise managed, it may pose a present or potential danger to the human health or the environment. Special wastes are:

(A) hazardous waste from conditionally exempt small-quantity generators that may be exempt from full controls under Chapter 335, Subchapter N of this title (relating to Household Materials Which Could Be Classified as Hazardous Wastes);

(B) Class 1 industrial nonhazardous waste;

(C) untreated medical waste;

(D) municipal wastewater treatment plant sludges, other types of domestic sewage treatment plant sludges, and water-supply treatment plant sludges;

(E) septic tank pumpings;

(F) grease and grit trap wastes;

(G) wastes from commercial or industrial wastewater treatment plants; air pollution control facilities; and tanks, drums, or containers used for shipping or storing any material that has been listed as a hazardous constituent in 40 Code of Federal Regulations (CFR) Part 261, Appendix VIII but has not been listed as a commercial chemical product in 40 CFR §261.33(e) or (f);

(H) slaughterhouse wastes;

(I) dead animals;

(J) drugs, contaminated foods, or contaminated beverages, other than those contained in normal household waste;

(K) pesticide (insecticide, herbicide, fungicide, or rodenticide) containers;

(L) discarded materials containing asbestos;

(M) incinerator ash;

(N) soil contaminated by petroleum products, crude oils, or chemicals in concentrations of greater than 1,500 milligrams per kilogram total petroleum hydrocarbons; or contaminated by constituents of concern that exceed the concentrations listed in Table 1 of §335.521(a)(1) of this title (relating to Appendices);

(O) used oil;

(P) waste from oil, gas, and geothermal activities subject to regulation by the Railroad Commission of Texas when those wastes are to be processed, treated, or disposed of at a solid waste management facility authorized under this chapter;

(Q) waste generated outside the boundaries of Texas that contains:

(i) any industrial waste;

(ii) any waste associated with oil, gas, and geothermal exploration, production, or development activities; or

(iii) any item listed as a special waste in this paragraph;

(R) lead acid storage batteries; and

(S) used-oil filters from internal combustion engines.

(149) **Stabilized sludges**--Those sludges processed to significantly reduce pathogens, by processes specified in 40 Code of Federal Regulations Part 257, Appendix II.

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

(A) Examples of storage facilities are collection points for:

(i) only nonputrescible source-separated recyclable material;

(ii) consolidation of parking lot or street sweepings or wastes collected and received in sealed plastic bags from such activities as periodic citywide cleanup campaigns and cleanup of rights-of-way or roadside parks; and

(iii) accumulation of used or scrap tires prior to transportation to a processing or disposal facility.

(B) Storage includes operation of pre-collection or post-collection as follows:

(i) pre-collection - that storage by the generator, normally on his premises, prior to initial collection; or

(ii) post-collection - that storage by a transporter or processor, at a processing facility, while the waste is awaiting processing or transfer to another storage, disposal, or recovery facility.

(151) **Storage battery**--A secondary battery, so called because the conversion from chemical to electrical energy is reversible and the battery is thus rechargeable. Secondary or storage batteries contain an electrode made of sponge lead and lead dioxide, nickel-iron, nickel-cadmium, silver-zinc, or silver-cadmium. The electrolyte used is sulfuric acid. Other types of storage batteries contain lithium, sodium-liquid sulfur, or chlorine-zinc using titanium electrodes.

(152) **Structural components**--Liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the municipal solid waste landfill that is necessary for protection of human health and the environment.

(153) **Surface impoundment**--A natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is designed to hold an accumulation of liquids; examples include holding, storage, settling, and aeration pits, ponds, and lagoons.

(154) **Surface water**--Surface water as included in water in the state.

(155) **Tank**--A stationary device, designed to contain an accumulation of solid waste, which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) that provide structural support.

(156) **Tank system**--A solid waste storage or processing tank and its associated ancillary equipment and containment system.

(157) **Transfer station**--A facility used for transferring solid waste from collection vehicles to long-haul vehicles (one transportation unit to another transportation unit). It is not a storage facility such as one where individual residents can dispose of their wastes in bulk storage containers that are serviced by collection vehicles.

(158) **Transportation unit**--A truck, trailer, open-top box, enclosed container, rail car, piggy-back trailer, ship, barge, or other transportation vehicle used to contain solid waste being transported from one geographical area to another.

(159) **Transporter**--A person that collects, conveys, or transports solid waste; does not include a person transporting his or her household waste.

(160) **Trash**--Same as Rubbish.

(161) **Treatment**--Same as Processing.

(162) **Triple rinse**--To rinse a container three times using a volume of solvent capable of removing the contents equal to 10% of the volume of the container or liner for each rinse.

(163) **Uncompacted waste**--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 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.

(164) **Unified soil classification system**--The standardized system devised by the United States Army Corps of Engineers for classifying soil types.

(165) **Universal waste**--Any of the following hazardous wastes that are subject to the universal waste requirements of Chapter 335, Subchapter H, Division 5 of this title (relating to Universal Waste Rule):

(A) batteries, as described in 40 Code of Federal Regulations (CFR) §273.2;

(B) pesticides, as described in 40 CFR §273.3;

(C) thermostats, as described in 40 CFR §273.4;

(D) paint and paint-related waste, as described in §335.262(b) of this title (relating to Standards for Management of Paint and Paint-Related Waste); and

(E) lamps, as described in 40 CFR §273.5.

(166) **Unloading areas**--Areas designated for unloading, including all working faces, active disposal areas, storage areas, and other processing areas.

(167) **Unstable area**--A location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

(168) **Uppermost aquifer**--The geologic formation nearest the natural ground surface that is an aquifer; includes lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(169) **Vector**--An agent, such as an insect, snake, rodent, bird, or animal capable of mechanically or biologically transferring a pathogen from one organism to another.

(170) **Washout**--The carrying away of solid waste by waters.

(171) **Waste acceptance hours**--Those hours when waste is received from off-site.

(172) **Waste management unit boundary**--A vertical surface located at the perimeter of the unit. This vertical surface extends down into the uppermost aquifer.

(173) **Waste-separation/intermediate-processing center**--A facility, sometimes referred to as a materials recovery facility, to which recyclable materials arrive as source-separated materials, or where recyclable materials are separated from the municipal waste stream and processed for transport off-site for reuse, recycling, or other beneficial use.

(174) **Waste-separation/recycling facility**--A facility, sometimes referred to as a material recovery facility, in which recyclable materials are removed from the waste stream for transport off-site for reuse, recycling, or other beneficial use.

(175) **Water in the state**--Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(176) **Water table**--The upper surface of the zone of saturation at which water pressure is equal to atmospheric pressure, except where that surface is formed by a confining unit.

(177) **Waters of the United States**--All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide, with their tributaries and adjacent wetlands, interstate waters and their tributaries, including interstate wetlands; all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters that are or could be used by interstate or foreign travelers for recreational or other purposes; from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; that are used or could be used for industrial purposes by industries in interstate commerce; and all impoundments of waters otherwise considered as navigable waters; including tributaries of and wetlands adjacent to waters identified herein.

(178) **Wetlands**--As defined in Chapter 307 of this title (relating to Texas Surface Water Quality Standards).

(179) **White goods**--Discarded large household appliances such as refrigerators, stoves, washing machines, or dishwashers.

(180) **Working face**--Areas in a landfill where waste has been deposited for disposal but has not been covered.

(181) **Yard waste**--Leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscaping maintenance and land-clearing operations. The term does not include stumps, roots, or shrubs with intact root balls.

Adopted March 1, 2006

Effective March 27, 2006

### **§330.5. Classification of Municipal Solid Waste Facilities.**

(a) The commission has classified all municipal solid waste (MSW) facilities according to the method of processing or disposal of MSW. Subject to the limitations in §§330.15, 330.171, and 330.173 of this title (relating to General Prohibitions; Disposal of Special Wastes; and Disposal of Industrial Wastes), and with the written approval of the executive director, Type I, IV, V, and VI MSW facilities may also receive special wastes, including Class 1 industrial solid waste and hazardous waste from conditionally exempt small quantity generators, if properly handled and safeguarded in the facility.

(1) MSW facility - Type I. A Type I landfill unit is the standard landfill for the disposal of MSW. The commission may authorize the designation of special-use areas for processing, storage, and disposal or any other functions involving solid waste. Except as allowed in subsections (b) - (e) of this section, owners or operators shall follow the permit application requirements prescribed in Subchapter B of this chapter (relating to Permit and Registration Application Procedures) and the minimum design and operational requirements of Subchapter D of this chapter (relating to Operational Standards for Municipal Solid Waste Landfill Facilities); Subchapter F of this chapter (relating to Analytical Quality Assurance and Quality Control); Subchapter G of this chapter (relating to Surface Water Drainage); Subchapter H of this chapter (relating to Liner System Design and Operation); Subchapter I of this chapter (relating to Landfill Gas Management); Subchapter J of this chapter (relating to Groundwater Monitoring and Corrective Action); Subchapter K of this chapter (relating to Closure and Post-Closure); Subchapter L of this chapter (relating to Closure, Post-Closure, and Corrective Action Cost Estimates); Subchapter M of this chapter (relating to Location Restrictions); Subchapter T of this chapter (relating to Use of Land Over Closed Municipal Solid Waste Landfills); and Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities). Those landfill units meeting the requirements of subsection (b) of this section shall be referred to as Type IAE landfill units. Type IAE landfill

units are authorized to accept the same types of waste as Type I landfill units subject to the limitations in ' 330.173 of this title, and are exempt from Subchapters H and J of this chapter. Owners or operators of Type I landfill facilities that are authorized to operate a Type IV cell or trench shall operate the cell or trench in accordance with paragraph (2) of this subsection.

(2) MSW facility--Type IV. A Type IV landfill unit may only accept brush, construction, or demolition waste, and/or rubbish. A Type IV landfill unit may not accept putrescible wastes, conditionally exempt small-quantity generator waste, or household wastes. Except as allowed in subsection (b) of this section, owners or operators shall follow the permit application requirements prescribed in Subchapter B of this chapter and the minimum design and operational standards prescribed in Subchapters D, F, and G of this chapter; §§330.331(d), 330.335, 330.337, 330.339, and 330.341 of this title (relating to Liner System Design and Operation); §330.417 of this title (relating to Groundwater Monitoring at Type IV Landfills); §§330.453, 330.463(a), 330.465, and 330.467 of this title (relating to Closure and Post-Closure); Subchapter M of this chapter; and Chapter 37, Subchapter R of this title. Those landfill units meeting the requirements of subsection (b) of this section shall be referred to as Type IVAE landfill units. Type IVAE landfill units are authorized to accept the same types of waste as Type IV landfill units and are exempt from Subchapters H and J of this chapter.

(3) MSW facility--Type V. Separate solid waste processing facilities are classified as Type V. These facilities include processing plants that transfer, incinerate, shred, grind, bale, salvage, separate, dewater, reclaim, and/or provide other storage or processing of solid waste. Owners or operators shall follow the minimum design and operational requirements prescribed in Subchapter E of this chapter (relating to Operational Standards for Municipal Solid Waste Storage and Processing Units); Subchapter F of this chapter; Subchapter G of this chapter; Subchapter H of this chapter, if required; Subchapter K of this chapter; Subchapter L of this chapter, if financial assurance is required; Subchapter M of this chapter; and Chapter 37, Subchapter R of this title, except that owners and operators of recycling facilities who store combustible material are required to comply with Chapter 37, Subchapter J of this title (relating to Financial Assurance for Recycling Facilities). Groundwater monitoring may be required by the executive director and shall be maintained in accordance with the requirements of Subchapter J of this chapter.

(4) MSW facility--Type VI. A Type VI facility or operation is a facility using a new or unproven method of managing or utilizing MSW, including resource and energy recovery projects for processes that are not currently in use in Texas. The commission may limit the size of these facilities until the method is proven. The minimum operational standards are prescribed in Subchapter E of this chapter.

(5) MSW facility--Type VII. A Type VII facility or operation is a facility for the land management of sludges and/or similar wastes. Operational standards, depending on the particular waste, facility purpose, and method of operation (land application for beneficial use, land disposal to include landfilling and land treatment, etc.) are contained in Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation).

(6) MSW facility--Type VIII. Facilities for the management of used or scrap tires are classified as Type VIII. Standards are prescribed in Chapter 328, Subchapter F of this title (relating to Management of Used or Scrap Tires).

(7) MSW facility--Type IX. A Type IX facility is an energy, material, gas recovery for beneficial use, or landfill mining facility located within or adjacent to a closed disposal facility, an inactive portion of a disposal facility, or an active disposal facility, used for extracting materials for energy and material recovery or for gas recovery for beneficial use. Registration by rule requirements for facilities that recover landfill gas for beneficial use are prescribed in §330.9(k) of this title (relating to Registration Required). Owners or operators of other Type IX facilities shall follow the registration application requirements prescribed in Subchapter B of this chapter. All owners and operators shall follow the minimum design and operational requirements of Subchapter E of this chapter; §330.459 of this title (relating to Closure Requirements for Municipal Solid Waste Storage and Processing Units); §330.461 of this title (relating to Certification of Final Facility Closure); §330.505 of this title (relating to Closure Cost Estimates for Storage and Processing Units); and Chapter 37, Subchapter R of this title. Waste mining activities shall also follow the minimum design and operation requirements of §330.149 of this title (relating to Odor Management Plan); §330.151 of this title (relating to Disease Vector Control); §330.165 of this title (relating to Landfill Cover); and §330.167 of this title (relating to Pondered Water). Owners or operators of an MSW landfill facility applying for a non-beneficial use gas control system for any area within the facility's permit boundary shall apply for a permit modification under §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications). Type IX facility permits and registrations previously issued for the recovery and beneficial use of landfill gas are considered to remain valid under applicable permit provisions until amended, modified, or revoked by the commission. The owner or operator must submit all information necessary to complete the air quality review as prescribed by the commission and be approved by the executive director prior to the Type IX registration by rule becoming effective.

(b) Owners or operators of a Type IAE or Type IVAE landfill facility may qualify for an arid exemption, as follows.

(1) Owners or operators of new, existing, and lateral expansions of Type IAE or Type IVAE landfill units may qualify for an arid exemption and be

exempt from Subchapters H and J of this chapter, provided all of the following conditions are met:

(A) the facility disposes less than 20 tons per day based on an annual average of authorized waste in a Type IAE landfill unit and/or less than 20 tons per day based on an annual average of authorized waste in a Type IVAE landfill unit for a total waste acceptance rate less than 40 tons per day for the facility considering all waste streams based on an annual average;

(B) there is no evidence of existing groundwater contamination from the facility;

(C) the facility serves a community that has no practicable waste management alternative; and

(D) the facility is located in an area that receives less than or equal to 25 inches of annual average precipitation based on precipitation data from the nearest official precipitation recording station for the most recent 30-year reporting period.

(2) Requests for exemptions under §330.63(d)(5) of this title (relating to Contents of Part III of the Application) may be approved administratively by the executive director, upon demonstration of compliance with all applicable criteria. The executive director may deny an exemption request if the available information indicates that granting the exemption could result in a substantial threat of groundwater contamination. Existing Type IAE landfill permits, which include a 20 tons per day waste disposal limit, may be revised via a major amendment to allow for disposal of an additional less than 20 tons of authorized waste in a Type IVAE landfill unit located in a separate area of the same facility. Existing Type IAE landfill permits, which do not include a waste disposal limit or include a waste disposal limit in excess of limits allowed for Type IAE landfill units, may be modified consistent with the restrictions for small MSW landfills. Within 180 days of the effective date of the comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions), owners and operators of such a permit shall comply with the waste acceptance rate limit for a Type IAE landfill unit or apply to modify such permit to include a Type IVAE landfill unit located in a separate area of the facility. Such permits remain valid until a final decision is made on the modification application. Such a modification must be processed in accordance with §305.70(l) of this title as a modification subject to public notice. Such a modification application must be submitted in conjunction with a corresponding application to modify the revised estimated waste acceptance rate under §330.125(h) of this title (relating to Recordkeeping Requirements).

(3) Owners or operators may appeal denials of a request for exemption to the commission for decision.

(4) If the owner or operator of a new, existing, or lateral expansion of a Type IAE or Type IVAE landfill facility who has previously asserted eligibility for the arid exemption has knowledge or becomes aware of groundwater contamination from the facility within a one-mile radius of the unit, the facility no longer meets the definition of a Type IAE or Type IVAE landfill facility, the waste reduction program is ineffective (based upon an evaluation of trends established after a minimum period of a year), or a practicable alternative becomes available, the owner or operator shall notify in writing the executive director of such condition(s) and thereafter comply with Subchapter B, Subchapter H, and Subchapter J of this chapter on a schedule specified by the executive director.

(5) The executive director may consider the economic investment made by the owner or operator in establishing the schedule for compliance.

(6) The minimum time allowed for compliance necessitated by loss of Type IAE or Type IVAE landfill facility status or availability of a practicable alternative shall be 18 months.

(7) A Type IAE or Type IVAE landfill facility that meets the requirements of this subsection shall maintain the integrity of any existing on-site groundwater monitor wells and make them available to the executive director for the collection of groundwater samples.

(c) For MSW landfills that stopped receiving waste before October 9, 1991, and unauthorized MSW sites, the closure provisions of §330.453 of this title (relating to Closure Requirements for Municipal Solid Waste Landfill Units that Stopped Receiving Waste Prior to October 9, 1991, Type IV Landfills, and Municipal Solid Waste Sites) apply. If not previously submitted, owners or operators shall submit a closure report that documents that MSW landfill units or unauthorized MSW sites, or portions thereof, have received final cover.

(d) MSW landfill units that receive waste after October 9, 1991, but stop receiving waste before October 9, 1993, are subject to the final cover requirements specified in §330.455 of this title (relating to Closure Requirements for Municipal Solid Waste Landfill Units that Received Waste on or after October 9, 1991, but Stopped Receiving Waste Prior to October 9, 1993). The final cover must be installed and certified in accordance with the requirements contained in §§330.451, 330.453, 330.455, and 330.457 of this title (relating to Closure and Post-Closure). Owners or operators of MSW landfill units described in this subsection that fail to complete cover installation and certification within the time limits specified in

Subchapter K of this chapter will be subject to all the requirements of these regulations.

(e) All MSW landfill units that receive waste on or after October 9, 1993, must comply with all requirements of these regulations, unless otherwise specified.

Adopted March 1, 2006

Effective March 27, 2006

### **§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 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.

Adopted July 25, 2012

Effective August 16, 2012

### **§330.9. Registration Required.**

(a) Except as provided in §§330.7, 330.11, 330.13, or 330.25 of this title (relating to Permit Required; Notification Required; Waste Management Activities Exempt from Permitting, Registration, or Notification; Relationship with County Licensing System), no person may cause, suffer, allow, or permit any activity of storage, processing, removal, or disposal of any municipal solid waste (MSW) unless that activity is authorized by a registration 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 waste to be stored, processed, or disposed. No person may commence physical construction of a new MSW management facility subject to this registration requirement without first having submitted a registration application in accordance with §§330.57, 330.59, 330.61, 330.63, and 330.65 of this title (relating to Permit and Registration Application Procedures) and received a registration from the commission. A person shall include a statement justifying the facility's eligibility for a registration as established under this section. A person shall submit a claim for a registration by rule in duplicate with one copy sent directly to the appropriate Texas Commission on Environmental Quality regional office.

(b) A registration is required for an MSW transfer station facility that is used in the transfer of MSW to a solid waste processing or disposal facility from any of the following:

- (1) a municipality with a population of less than 50,000;
- (2) a county with a population of less than 85,000;

(3) a facility used in the transfer of MSW that transfers or will transfer 125 tons per day or less; or

(4) a transfer station located within the permitted boundaries of an MSW Type I or Type IV facility as specified in §330.5(a) of this title (relating to Classification of Municipal Solid Waste Facilities).

(c) A registration is required to establish a waste-separation/recycling facility established at a permitted MSW facility if owned by the permittee.

(d) A registration is required for a facility where the only operation is the storage and/or processing of used and scrap tires as provided for in Chapter 328 of this title (relating to Waste Minimization and Recycling). These facilities shall be registered with the executive director in accordance with Chapter 328 of this title. Failure to operate such registered facilities in accordance with the requirements established in Chapter 328 of this title may be grounds for the revocation of the registration.

(e) A registration is required for any new MSW Type V transfer station that includes a material recovery operation that meets all of the following requirements.

(1) Materials recovery. The owner or operator must recover 10% or more by weight or weight equivalent of the total incoming waste stream for reuse or recycling; ensure that the incoming waste has already been reduced by at least 10% through a source-separation recycling program; or, also operate one or more source-separation recycling programs in the county where the transfer station is located and those source-separation recycling programs manage a total weight or weight equivalent of recyclable materials equal to 10% or more by weight or weight equivalent of the incoming waste stream to all transfer stations to which credit is being applied. The owner or operator must demonstrate in the registration application the method that will be used to assure that the 10% requirement is achieved.

(2) Distance to a landfill. The transfer facility must demonstrate in the registration application that it will transfer the remaining nonrecyclable waste to a landfill not more than 50 miles from the facility.

(f) Except as provided in §330.11(d) of this title, a registration is required for an MSW Type V processing facility that processes only grease trap waste, grit trap waste, or septage or a combination of these three liquid wastes in accordance with either paragraph (1) or (2) of this subsection. For the purposes of this section, grit trap waste means grit trap waste from commercial car washes and excludes grit trap waste from other generators.

(1) The facility must attain a 10% recovery of material for beneficial use from the incoming waste. Recovery of material for beneficial use is considered to be the recovery of fats, oils, greases, and the recovery of food solids for composting, but does not include the recovery of water. The Type V processing facilities issued a registration under a permit exemption based on 10% recovery of material for beneficial use must maintain records in accordance with the requirements of §330.219(b)(9) of this title (relating to Recordkeeping and Reporting Requirements). Records and a report must be provided on a quarterly basis to the executive director that demonstrate that at least 10% of the volume of the waste received was processed to recover solid material that was recycled or reused. Failure to achieve the relevant percent recycling rate in any two quarters within any one-year period will cause a registration to terminate and will require the owner or operator of the facility to obtain a permit to continue facility operations. The quarterly report must provide the volume received, percent solids, and the method of determining the percent solids, processed, disposed, and recycled or reused. Records must be kept on a volume basis in gallons except that solids passing the paint filter test may be reported in cubic yard volume converted to gallons. The methods of recycling or reuse must be specified in the report. Records must be kept for solids and recyclable material leaving these facilities in the form of manifests, shipping documents, or trip tickets. The quarterly report must include manifests, shipping documents, or trip tickets to show where the recyclable material was taken for recycling, and the recycled material must be reconciled with the volume of waste received. Water discharged from processing is not allowed to be counted as part of the 10% recovery of material. Recovery and recycling or reuse of fats, oils, and greases may be considered a part of recycling for this activity. Composting of solids resulting from waste processing may be considered to be recycling as part of this activity. Any material such as lime, polymer, or flocculent added as part of the facility process is not allowed to be considered as part of the 10% recovery of material from the waste stream and must be subtracted from the material considered as recycled. Diversion of material from the waste stream without processing is not considered to be recycling as part of this activity.

(2) The Type V processing facility must be located at a manned treatment facility that is permitted under Texas Water Code, Chapter 26; is permitted to discharge at least one million gallons per day; and is owned by and operated for the benefit of a political subdivision of this state. Facilities that have received a permit and wish to add capacity may apply for a registration in lieu of a permit amendment if the facilities meet the registration requirements established in this chapter.

(g) A registration is required for a mobile liquid waste processing unit that processes only grease trap waste, grit trap waste, or septage or a combination of these three liquid wastes. For the purposes of this section, grit trap waste means grit trap waste from commercial car washes and excludes grit trap waste from other

generators. Registration applications shall contain the information specified in §§330.59(a) and (e) - (h), 330.61(a) and (b), and 330.63(a), (d)(6), (h), and (j) of this title (relating to Contents of Part I of the Application; Contents of Part II of the Application; and Contents of Part III of the Application). The following requirements also apply.

(1) Mobile liquid waste processing shall be limited to the processing of liquid waste while at the generator's trap.

(2) Effluent from the processing of the liquid waste must be discharged to the generator's trap or interceptor.

(3) The mobile liquid waste processing units regulated under this section include truck-mounted processes that are also known as separator trucks, and any other liquid waste processes that are not considered to be fixed to a specific location.

(4) This section is not meant to supplant rules or ordinances of local governments where stricter standards are in effect.

(5) This section is not applicable to septage if waste has received only a pH adjustment prior to or during transportation for disposal at a treatment facility permitted under Texas Water Code, Chapter 26, or other authorized facility. Transporters who only adjust septage pH during transportation shall register in accordance with §312.142 of this title (relating to Transporter Registration).

(h) A registration is required for an MSW Type VI facility that demonstrates new management methods for processing or handling grease trap waste, grit trap waste, septage, or a combination of these three liquid wastes. For the purposes of this section, grit trap waste means grit trap waste from commercial car washes and excludes grit trap waste from other generators. Those facilities meeting this exemption must obtain a registration by meeting the operational criteria and design criteria established in §330.63(d)(9) of this title.

(i) A registration is required for the following material recovery operations from a landfill. The following operations are subject to the general requirements found in §330.601 of this title (relating to General Requirements), and the requirements set for soil end product standards in §330.615 of this title (relating to Final Soil Product Grades and Allowable Uses), and the air quality requirements in §330.607 of this title (relating to Air Quality Requirements):

(1) operations that recover reusable or recyclable material buried in permitted or closed MSW landfill facilities, or MSW landfill facilities that were never permitted;

(2) operations that reclaim soil from permitted or closed MSW landfills, or from MSW landfill facilities that were never permitted; and

(3) facilities that have received prior approval for excavation of buried materials through permits, permit amendments, or other agency authorization, which are exempt from further authorization requirements, as established in this subchapter, for the specific authorization received. Soil final product standards shall be applicable for all registered facilities.

(j) A registration by rule is granted for the owner or operator of a Type IX MSW facility that recovers landfill gas for beneficial use if all of the following conditions are met.

(1) The owner or operator shall submit the following information at least 60 days prior to commencing operations:

(A) a large-scale plan drawing of the facility showing the following:

(i) facility boundaries (show permit boundaries and/or boundaries and dimensions of tract or land or closed MSW landfill units on which the gas recovery system is to be developed); and

(ii) landfill gas treatment, gas compression, electrical power generation equipment, and any other beneficial gas-use equipment, indicating limits of waste placement and additional easements required;

(B) for enclosed structures, provisions for fire control facilities (fire hydrants, fire extinguisher, water tanks, and waterwell), continuous methane monitoring, and explosion-proof fixtures;

(C) a discussion of the proposed method for condensate disposal, including during the landfill post-closure care period;

(D) an estimation of average daily gas production;

(E) an estimation of the design daily gas production;

(F) descriptions of the process units;

(G) a cost estimate for closure following the requirements of §330.505 of this title (relating to Closure Cost Estimates for Storage and Processing Units); and

(H) a description of the financial assurance mechanism required by Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities).

(2) The owner or operator shall acquire all authorizations regarding air emissions for the facility and comply with the following regulations:

(A) Subchapter E of this chapter (relating to Operational Standards for Municipal Solid Waste Storage and Processing Units);

(B) §330.459 and §330.461 of this title (relating to Closure Requirements for Municipal Solid Waste Storage and Processing Units; and Certification of Final Facility Closure); and

(C) §330.505 of this title.

(k) A registration is required for a new MSW transfer station that is used only in the transfer of grease trap waste, grit trap waste, septage, or other similar liquid waste if the facility used in the transfer will receive 32,000 gallons per day or less.

(l) A registration is required for a new liquid waste transfer facility to be located on, or at, other commission-authorized facilities.

Adopted April 27, 2016

Effective May 26, 2016

### **§330.11. Notification Required.**

(a) Except as provided by §330.13 of the title (relating to Waste Management Activities Exempt from Permitting, Registration, or Notification) and recycling facilities that notify in accordance with §328.5 of this title (relating to Reporting and Recordkeeping Requirements), a person that intends to store, process, or dispose of municipal solid waste (MSW) without a permit as authorized by §330.7 of this title (relating to Permit Required), registration as authorized by §330.9 of this title (relating to Registration Required), or §330.25 of this title (relating to Relationship with County Licensing System), shall notify the executive director, and any local pollution agency with jurisdiction that has requested to be notified, in writing, that storage, processing, or disposal activities are planned, at least 90 days prior to engaging in these activities, except for recycling and other activities as may be specifically exempted. Additional information may be requested to enable the executive director to determine whether such storage, processing, or disposal is in compliance with the terms of this chapter. This information may include, but is not limited to, type of waste, waste management methods, facility engineering plans and specifications, and the geology and hydrogeology at the facility. Any information

provided under this subsection shall be submitted to the executive director in duplicate with one copy sent directly to the Texas Commission on Environmental Quality (TCEQ) regional office. A person shall include a statement justifying the facility's eligibility for a notification as established under this section.

(b) Any person that stores, processes, or disposes of MSW shall have the continuing obligation to provide prompt written notice to the executive director of any changes or additional information concerning waste type, waste management methods, facility engineering plans and specifications, and geology and hydrogeology at the facility additional to that reported in subsection (a) of this section, authorized in any permit or registration, or stated in any application filed with the executive director. Any information provided under this subsection shall be submitted to the executive director in duplicate form with copies sent directly to the TCEQ's regional office and any local pollution agency with jurisdiction that has requested to be notified.

(c) A person that stores, processes, or disposes of MSW shall notify the executive director, and any local pollution agency with jurisdiction that has requested to be notified, in writing of any closure activity or activity of facility expansion not authorized by permit or registration, at least 90 days prior to conducting this activity. The executive director may request additional information to determine whether such activity is in compliance with this chapter. Any information provided under this subsection shall be submitted to the executive director in duplicate form.

(d) A notification is required for the storage or processing of the following types of MSW: grease trap wastes; grit trap wastes; or septage that contains free liquids if the waste is treated/processed at a permitted Type I MSW facility.

(e) A notification is required for the following facilities or locations:

(1) a citizens' collection station;

(2) a collection and processing point for only nonputrescible source-separated recyclable material, provided that the facility is in compliance with §§328.3 - 328.5 of this title (relating to General Requirements; Limitations on Storage of Recyclable Materials; and Reporting and Recordkeeping Requirements);

(3) a facility to treat petroleum-contaminated soil if the contaminated soil is treated/processed at a permitted Type I MSW facility;

(4) an MSW transfer station in existence prior to the comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions) that is used only in the transfer of grease trap waste, grit trap waste, septage, or other similar liquid

waste if the facility used in the transfer will receive 32,000 gallons per day or less. These liquid waste transfer stations must be designed and operated in accordance with the requirements of Subchapter E of this chapter (relating to Operational Standards for Municipal Solid Waste Storage and Processing Units);

(5) a temporary storage facility regulated under §312.147 of this title (relating to Temporary Storage) that stores 8,000 gallons or less for a period of four days or less in containers. This facility is not required to follow the requirements of Subchapter E of this chapter;

(6) a liquid waste transfer facility in existence prior to the effective date of the 2006 Revisions located on or at other commission authorized facilities if the facility is designed and operated in accordance with the requirements of Subchapter E of this chapter; or

(7) a pet cemetery. A person that intends to operate a pet cemetery shall comply with the requirements of §330.19 of this title (relating to Deed Recordation) and shall ensure that the animal carcasses are covered with at least two feet of soil within a time period that will prevent the generation of nuisance odors or health risks. A pet cemetery is a facility used only for the burial of domesticated animals kept as pets and service animals such as seeing-eye dogs. Animals raised for meat production or used only for animal husbandry may not be disposed of in a pet cemetery authorized under this subsection.

(f) An operator is required to notify the commission of the intended operation of a low-volume transfer station subject to the following conditions.

(1) The operator must own or otherwise effectively control the facility.

(2) Prior to notification, the operator must coordinate with the county authority to ensure compliance with all appropriate ordinances.

(3) The operator must notify the adjacent landowners, by first-class mail, concurrent with commission notification.

(4) Collected waste shall be sent off-site to an authorized facility at least weekly.

Adopted April 27, 2016

Effective May 26, 2016

**§330.13. Waste Management Activities Exempt from Permitting, Registration, or Notification.**

(a) A permit, registration, notification, or other authorization is not required for the disposal of up to 2,000 pounds per year of litter or other solid waste generated by an individual on that individual's own land and is not required to comply with §330.19 of this title (relating to Deed Recordation) provided that:

- (1) the litter or waste is generated on land that the individual owns;
- (2) the litter or waste is not generated as a result of an activity related to a commercial purpose;
- (3) the disposal occurs on land that the individual owns;
- (4) the disposal is not for a commercial purpose;
- (5) the waste disposed of is not hazardous waste or industrial waste;
- (6) the waste disposal method complies with Chapter 111, Subchapter B of this title (relating to Outdoor Burning); and
- (7) the waste disposal method does not contribute to a nuisance and does not endanger the public health or the environment. Exceeding 2,000 pounds per individual's residence per year is considered to be a nuisance.

(b) A permit, registration, notification, or other authorization is not required for the disposal of animal carcasses from government roadway maintenance where:

- (1) either of the following:
  - (A) the animals were killed on county or municipal roadways and the carcasses are buried on property owned by the entity that is responsible for road maintenance; or
  - (B) the animals were killed on state highway rights-of-way and the carcasses are disposed of by the Texas Department of Transportation by burying the carcasses on state highway rights-of-way; and
- (2) the waste disposal method does not contribute to a nuisance and does not endanger the public health or the environment; and
- (3) the animal carcasses are covered with at least two feet of soil within 24 hours of collection in accordance with §330.171(c)(2) of this title (relating to Disposal of Special Wastes).

(c) A permit, registration, notification, or other authorization is not required for veterinarians performing activities as authorized by Texas Occupations Code, §801.361, Disposal of Animal Remains. Disposal by burning under this section must comply only with §111.209(3) of this title (relating to Exception for Disposal Fires).

(d) Except as required by §330.7(c)(2) and §330.9(a) of this title (relating to Permit Required; and Registration Required), a permit, registration, notification, or other authorization is not required for transporters of municipal solid waste.

(e) A permit, registration, notification, or other authorization is not required for a collection point for parking lot or street sweepings or wastes collected and received in sealed plastic bags from such activities as periodic city-wide cleanup campaigns and cleanup of rights-of-way or roadside parks.

(f) A permit, registration, notification, or other authorization is not required from a car wash facility for drying grit trap waste as long as these wastes are dried and disposed of in compliance with applicable federal, state, and local regulations. Grit trap waste from car wash facilities may be transported for drying purposes to other property if the car wash facility and the property with the drying bed have the same owner and if the facilities are located within 50 miles of each other. This subsection is not intended to preempt or supersede local government regulation of grit trap waste-drying facilities. Drying facilities must comply with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) if applicable.

Adopted April 27, 2016

Effective May 26, 2016

### **§330.15. General Prohibitions.**

(a) A person may not cause, suffer, allow, or permit the collection, storage, transportation, processing, or disposal of municipal solid waste (MSW), or the use or operation of a solid waste facility to store, process, or dispose of solid waste, or to extract materials under Texas Health and Safety Code, §361.092, in violation of the Texas Health and Safety Code, or any regulations, rules, permit, license, order of the commission, or in such a manner that causes:

(1) the discharge or imminent threat of discharge of MSW into or adjacent to the waters in the state without obtaining specific authorization for the discharge from the commission;

(2) the creation and maintenance of a nuisance; or

(3) the endangerment of the human health and welfare or the environment.

(b) MSW land disposal facilities (Types I, IAE, IV, IVAE, and VI) failing to satisfy the applicable requirements of this chapter, unless exempted by this chapter, are considered open dumps for purposes of state solid waste management planning under the Resource Conservation and Recovery Act and are prohibited under Resource Conservation and Recovery Act, §4005(a).

(c) Except as otherwise authorized by this chapter, a person may not cause, suffer, allow, or permit the dumping or disposal of MSW without the written authorization of the commission.

(d) The open burning of solid waste, except for the infrequent burning of waste generated by land-clearing operations, agricultural waste, silvicultural waste, diseased trees, emergency cleanup operations as authorized by the commission or executive director as appropriate, is prohibited at any MSW landfill. The operation of an air curtain incinerator as allowed in §330.7(g) of this title (relating to Permit Required) other than for the exceptions noted in the previous sentence, is prohibited.

(e) The following wastes are prohibited from disposal in any MSW facility.

(1) A lead acid storage battery shall not be intentionally or knowingly offered by a generator or transporter for disposal at an MSW landfill or incinerator, and/or shall not be intentionally or knowingly accepted for disposal at an MSW landfill or incinerator permitted under this chapter.

(A) Each battery improperly disposed of constitutes a separate violation and offense.

(B) A person that violates the provisions of this paragraph is subject to the criminal and/or civil penalties found in the Texas Health and Safety Code, as amended.

(2) Do-it-yourself used motor vehicle oil shall not be intentionally or knowingly offered by a generator or transporter for disposal at an MSW landfill or MSW incinerator, either by itself or mixed with other solid waste, and/or shall not be intentionally or knowingly accepted for disposal at an MSW landfill or MSW incinerator permitted under this chapter.

(A) It is an exception to this subsection if the mixing or commingling of used oil with solid waste that is to be disposed of in a landfill is incidental to, and the unavoidable result of, the mechanical shredding of motor vehicles; appliances; or other items of scrap, used, or obsolete metals.

(B) A person that violates the provisions of this paragraph is subject to the criminal and/or civil penalties found in the Texas Health and Safety Code, as amended.

(3) Used oil filters from internal combustion engines shall not be offered for landfill disposal by any generator and shall not be intentionally or knowingly accepted for disposal at a landfill permitted under this chapter.

(4) Whole used or scrap tires shall not be accepted for disposal or disposed of in any MSW landfill, unless processed prior to disposal in a manner acceptable to the executive director.

(5) Refrigerators, freezers, air conditioners, and any other items containing chlorinated fluorocarbon (CFC) must be handled in accordance with 40 Code of Federal Regulations §82.156(f), as amended.

(6) Except as allowed in §330.177 of this title (relating to Leachate and Gas Condensate Recirculation), liquid waste as defined in §330.3 of this title (relating to Definitions) and as described in subparagraphs (A) and (B) of this paragraph below shall not be disposed of in any MSW landfill unit.

(A) Bulk or noncontainerized liquid waste shall not be accepted for disposal or disposed of in an MSW landfill unless the waste is household waste other than septic waste.

(B) Containers holding liquid waste shall not be accepted for disposal or disposed of in an MSW landfill unless:

(i) the container is a small container similar in size to that normally found in household waste;

(ii) the container is designated to hold liquids for use other than storage; or

(iii) the waste is household waste.

(7) Regulated hazardous waste as defined in §330.3 of this title shall not be accepted at an MSW facility.

(8) Polychlorinated biphenyls (PCB) wastes, as defined under 40 Code of Federal Regulations Part 761, shall not be accepted for disposal or disposed of in an MSW facility unless authorized by the United States Environmental Protection Agency and the MSW permit.

(9) Radioactive materials as defined in Chapter 336 of this title (relating to Radioactive Substance Rules), except as authorized in Chapter 336 of this title or that are subject to an exemption of the Department of State Health Services shall not be accepted at an MSW facility.

(f) MSW facilities receiving sewage sludge and failing to satisfy the criteria of this chapter violate Federal Clean Water Act, §309 and §405(e).

(g) The drilling of any test borings, for any reason, through previously deposited waste or cover material without prior written authorization from the executive director is prohibited.

(h) An MSW facility shall not cause:

(1) a discharge of solid wastes or pollutants adjacent to or into waters of the state, including wetlands, that is in violation of the requirements of Texas Water Code, §26.121;

(2) a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Federal Clean Water Act, including, but not limited to, the National Pollutant Discharge Elimination System requirements, under §402, as amended, or Texas Pollutant Discharge Elimination System requirements;

(3) a discharge of dredged or fill material to waters of the United States, including wetlands, that is in violation of the requirements under Federal Clean Water Act, §404, as amended; and

(4) a discharge of a nonpoint source pollution into waters of the United States, including wetlands, that violates any requirement of an area-wide or state-wide water quality management plan that has been approved under Federal Clean Water Act, §208 or §319, as amended.

(i) Processing of liquid waste as defined in §330.3 of this title, other than that incidental to transfer and storage, at a transfer station without a specific Type V processing authorization is prohibited.

Adopted March 1, 2006

Effective March 27, 2006

### **§330.17. Technical Guidelines.**

In order to promote the proper collection, handling, storage, processing, and disposal of municipal solid waste in a manner consistent with the purpose of the Texas Health and Safety Code and 40 Code of Federal Regulations Parts 257 and

258 as amended, the executive director will make available technical guidelines outlining acceptable methods designed to aid in compliance with this chapter. Guidelines should be considered as suggestions only.

Adopted March 1, 2006

Effective March 27, 2006

**§330.19. Deed Recordation.**

(a) Recording required. A person may not cause, suffer, allow, or permit the disposal of municipal solid waste prior to recording, in the county deed records of the county or counties in which the disposal takes place, a metes and bounds description of the portion or portions of the tract of land on which disposal of solid waste will take place.

(b) Proof of recordation. A certified copy of the recorded document shall be provided to the executive director prior to instituting disposal operations.

(c) Final recording. Upon completion of the disposal operation, closure of all landfill units, or final closure of the facility or site, or upon discovery of a closed municipal solid waste landfill or dumping area, the owner or operator shall file an "Affidavit to the Public" in a form provided by the executive director that includes an updated metes and bounds description of the extent of the disposal areas and the restrictions to future use of the land in accordance with §330.457(g) of this title (relating to Closure Requirements for Municipal Solid Waste Landfill Units that Receive Waste on or after October 9, 1993) and §330.461(c)(1) of this title (relating to Certification of Final Facility Closure).

Adopted March 1, 2006

Effective March 27, 2006

**§330.21. Closure.**

(a) Except for those persons subject to §330.13 of this title (relating to Waste Management Activities Exempt from Permitting, Registration, or Notification), a person is obligated to perform closure or remediation for a facility or area that contains municipal solid waste. The person can fulfill this obligation by meeting the remedy standards of Chapter 350 of this title (relating to Texas Risk Reduction Program). The regulations in Chapter 350 of this title supplement, but do not replace, any requirements for closure or remediation specified in subsections (b) and (c) of this section.

(b) Any person that stores, processes, or disposes of municipal solid waste at a facility permitted under §330.7 of this title (relating to Permit Required), or registered under §330.9 of this title (relating to Registration Required) shall, unless

specifically authorized by the commission, close the facility in accordance with the closure provisions of the permit or registration.

(c) Any person that stores, processes, or disposes of municipal solid waste is subject to the applicable provisions in Subchapter K of this chapter (relating to Closure and Post-Closure).

Adopted March 1, 2006

Effective March 27, 2006

**§330.23. Relationships with Other Governmental Entities.**

(a) Texas Department of Transportation (TxDOT). The executive director shall coordinate with TxDOT on the review of all permit applications for municipal solid waste (MSW) land disposal facilities existing or proposed within 1,000 feet of an interstate or primary highway to determine the need for screening or special operating requirements. When primary access to an MSW disposal facility is provided by state-maintained streets or highways, the executive director shall solicit recommendations from TxDOT regarding the adequacy and design capacity of such roadways to safely accommodate the additional volumes and weights of traffic generated or expected to be generated by the facility operation.

(b) United States Army Corps of Engineers. The executive director shall coordinate the review of all permit applications for MSW disposal facilities with the appropriate district engineer to determine the need for a permit from the Corps of Engineers.

(c) Federal Aviation Administration (FAA). The executive director shall coordinate the review of permit applications for all MSW land disposal facilities existing or proposed in the vicinity of airports with the appropriate airports= district office of the FAA (FAA Advisory Circular 150/5200.33A, <sup>Δ</sup>Hazardous Wildlife Attractants on or Near Airports,<sup>@</sup> July 27, 2004).

(d) 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.

(e) Regional planning agencies. The agency will provide educational, technical, and advisory assistance to the various councils of governments and regional planning commissions throughout the state.

(f) Municipal governments. Municipalities may enforce the provisions of this chapter as provided for in the THSC and the Texas Water Code. 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 Texas Water Code.

(g) 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 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 Texas Water Code, 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 a permit 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.

(h) Texas Parks and Wildlife Department (TPWD). TPWD has jurisdiction over certain environmental issues that may be affected by MSW facilities including, but not limited to, endangered species and wetlands. The executive director will solicit comments from, and consider information provided by, TPWD.

Adopted March 1, 2006

Effective March 27, 2006

### **§330.25. 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 solid 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 Texas Commission on Environmental Quality regional office. No license for the use of a facility for the disposal of solid waste may be issued, renewed, or extended without prior approval of the commission. 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 solid waste collection, handling, storage, and disposal.

(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 municipal solid waste (MSW) facility required to obtain a permit, a county government shall promulgate regulations that are consistent with those established by the commission and that have been approved by the commission. A county exercising authority shall use the same evaluation processes as prescribed for use by the commission to include providing appropriate agencies, in accordance with §330.23 of this title (relating to Relationships with Other Governmental Entities) and Subchapter B of this chapter (relating to Permit and Registration Application Procedures), an opportunity to review and comment on those applications for which they may have a jurisdictional interest. In view of the technical evaluations and site investigations that must be made by some review agencies, ample time shall be allowed to receive and review agency comments prior to a public hearing. To ensure that review agencies are provided sufficient information on which to base a determination, counties will include in their permit application forms the data requirements as specified in permit applications used by the commission, supplemented by any other requirements deemed necessary by the individual counties.

(B) Before exercising licensing authority for an MSW facility that is not required to obtain a permit, a county government shall promulgate regulations that are compatible with those established by the commission. The county's 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 MSW management within the extraterritorial or territorial jurisdiction of incorporated cities or towns.

(D) The commission will issue permits for MSW facilities located within the extraterritorial or territorial jurisdiction of incorporated cities or towns within the county.

(E) A county license for an MSW 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 permit from the commission is not required.

(2) Public meeting. A county shall offer an opportunity for a public meeting and offer an opportunity for a public hearing, and issue appropriate notifications, in accordance with the procedures established in Chapter 39, Subchapter H of this title (relating to Applicability and General Provisions) and this

chapter prior to issuance, amendment, extension, revocation, or renewal of a license.

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

(1) the name and address of each person that owns the land on which the solid waste facility is located and the person that is or will be the operator or person in charge 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. Solid waste facilities licensed by a county shall be operated in compliance with regulations of the commission and the county.

Adopted March 1, 2006

Effective March 27, 2006