

SUBCHAPTER B: PERMIT AND REGISTRATION APPLICATION PROCEDURES

§§330.53, 330.55, 330.57, 330.59, 330.61, 330.63, 330.65, 330.67,

330.69, 330.71, 330.73

Effective May 29, 2008

§330.53. Pre-application Review.

(a) Applicability. This section applies to potential permit owners or operators who desire to enter into agreements with affected persons and/or identify issues of local concern prior to submission of an application. A pre-application review process may be useful in situations where opposition to an application is likely to exist.

(b) Purpose. A pre-application review should serve to identify issues of concern, facilitate communication between a potential owner or operator and persons that would be affected by an application, and resolve as many points of conflict as possible prior to the submission of an application. A local review committee shall:

(1) interact with the owner or operator in a structured manner during the pre-application review stage of the permitting process and, if necessary, during the technical review stage of the permitting process, raise and attempt to resolve both technical and nontechnical issues of concern; and

(2) produce a fact-finding report documenting resolved and unresolved issues and unanswered questions. The owner or operator shall submit this report to the executive director with the owner's or operator's permit application.

(c) Procedure.

(1) If an owner or operator decides to participate in a local review committee process, the owner or operator shall file three copies of a notice of intent to file an application with the executive director. The filing of this notice initiates the pre-application review process. The date of filing shall be the date the notice is stamped as received by the executive director. An owner or operator who wishes to have a pre-application meeting under the provisions of Texas Health and Safety Code, §361.0635, should include a draft Part I, as described in §330.59 of this title (relating to Contents of Part I of the Application) with their request.

(2) Upon receipt of the notice of intent to file, the executive director shall forward a copy of the notice and an explanation of the local review committee process by certified mail to:

(A) the appropriate mayor and county judge if the proposed facility is to be located within the corporate limits or extraterritorial jurisdiction of a city; or

(B) the appropriate county judge if the proposed facility is to be located within an unincorporated area of the county; and

(C) the appropriate regional solid waste planning agency and council of governments (COG).

(3) Local review committees shall be composed of representatives of both local and regional interests and shall consist optimally of 12 individuals. However, an owner or operator may request a larger committee to better represent all interest groups present in a community or a smaller committee for economic reasons; however, committees shall maintain a 2:1 ratio of regional appointments to local appointments. Appointments to the local review committee shall be made according to the following guidelines.

(A) If a proposed facility is to be located within a particular city's limits, the mayor of the city shall be asked to make all local appointments.

(B) If a proposed facility is to be located in an unincorporated area, but within five miles of a city or cities, the mayor of each affected city shall be asked to appoint one member. The appropriate county judge shall be asked to appoint at least one member who lives within five miles of the proposed facility, if available and qualified. The county judge shall also be asked to appoint any remaining individuals necessary to complete local appointments to the committee.

(C) If a proposed facility would not be within five miles of a city, the appropriate county judge shall appoint at least one member, if available and qualified, who lives within five miles of the proposed facility and as many other individuals from the county as are necessary to complete the local appointments.

(D) Regional appointments shall be made by the appropriate regional solid waste planning agency/COG or another regional entity such as a special district or river authority designated by the COG. An attempt shall be made to make regional appointments from as many of the following interest groups as possible:

- (i) organized environmental groups;
- (ii) citizen organizations active in environmental issues;
- (iii) industry, preferably, but not necessarily, individuals with expertise in waste management;
- (iv) academic community, preferably, but not necessarily, individuals trained in a technical discipline related to waste management and/or public involvement;
- (v) community or land-use planning;
- (vi) organized public-interest advocates; and
- (vii) public health professionals.

(E) If any local official or regional entity has failed to make the necessary appointments within 15 days after the notice of intent to file has been submitted, the owner or operator may cease the local review process.

(F) Every effort should be made to appoint individuals who are willing to participate in good faith, able to devote adequate time to participation, and respected in the community or region. An elected official shall not be appointed to the committee if the official is elected by a constituency wholly or partly within the localities surrounding the facility, and appointees shall not be employees or agents of the owner or operator.

(G) An individual shall not serve on more than one local review committee at any one time.

(4) The local review committee shall meet within 21 days after the notice of intent is filed. The executive director will provide manuals to committee members that will orient them as to what the committee's activities should be, i.e., the production of a report detailing issues resolved, issues unresolved, and questions not able to be answered.

(5) The pre-application review process shall continue for a maximum of 90 days unless it is shortened or lengthened by mutual agreement between the owner or operator and the local review committee.

(6) Individuals who serve on local review committees shall serve without compensation. The potential owner or operator shall provide resource support that may include clerical and technical assistance, a facilitator, meeting space, and/or other items that may be necessary to aid the committee in its work.

(d) Committee report.

(1) Any report produced by a local review committee set up under this section shall be submitted to the executive director with the owner's or operator's permit application. The executive director may consider the report as an additional source of information concerning the application.

(2) The report shall not recommend approval or disapproval of the proposed facility. Rather, it shall describe the committee's work and summarize the committee's findings. The findings shall include issues resolved, issues unresolved, and questions not able to be answered.

Adopted March 1, 2006

Effective March 27, 2006

§330.55. Other Authorizations.

(a) Air pollution control. The construction and operation of waste management facilities shall comply with Subchapter U of this chapter (relating to Standard Air Permits for Municipal Solid Waste Landfill Facilities and Transfer Stations) or other approved air authorizations. Owners or operators of these types of facilities should consult with the Air Permits Division on or before the date that the municipal solid waste application is filed with the executive director.

(b) Water pollution control. All liquids resulting from the operation of solid waste facilities shall be disposed of in a manner that will not cause surface water or groundwater pollution. Facilities shall provide for the treatment of wastewaters resulting from waste management activities and from cleaning and washing. Owners or operators shall ensure that storm water and wastewater management is in compliance with the regulations of the commission.

Adopted March 1, 2006

Effective March 27, 2006

§330.57. Permit and Registration Applications for Municipal Solid Waste Facilities.

(a) Permit application. The application for a municipal solid waste facility is divided into Parts I - IV. Parts I - IV of the application shall be required before the application is declared administratively complete in accordance with Chapter 281 of this title (relating to Applications Processing). The owner or operator shall submit a complete application, containing Parts I - IV, before a hearing can be conducted on the technical design merits of the application. An owner or operator applying for a permit may request a land-use only determination. If the executive director determines that a land-use only determination is appropriate, the owner or operator shall submit a partial application consisting of Parts I and II of the application. The executive director may process a partial permit application to the extent necessary to determine land-use compatibility alone. If the facility is determined to be acceptable on the basis of land use, the executive director will consider technical matters related to the permit application at a later time. When this procedure is followed, an opportunity for a public hearing will be offered for each determination in accordance with §39.419 of this title (relating to Notice of Application and Preliminary Decision). A complete application, consisting of Parts I - IV of the application, shall be submitted based upon the results of the land-use only public hearing. Owners or operators of Type IAE and Type IVAE municipal solid waste landfill units are required to submit all parts of the application except for those items pertaining to Subchapters H and J of this chapter (relating to Liner System Design and Operation; and Groundwater Monitoring and Corrective Action). Owners or operators of Type IAE and Type IVAE municipal solid waste landfill units are exempt from the geology report requirements of §330.63(e) of this title (relating to Contents of Part III of the Application) except for the requirement to submit a soil boring plan in accordance with §330.63(e)(4) and (e)(4)(A) of this title, and the information requested in §330.63(e)(6) of this title.

(b) Registration application. A registration application for a municipal solid waste facility is also divided into Parts I - IV, but is not subject to a hearing request or to the administrative completeness determinations of Chapter 281 of this title.

(c) Parts of the application.

(1) Part I of the application consists of the information required in §281.5 of this title (relating to Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits), §305.45 of this title (relating to Contents of Application for Permit) and §330.59 of this title (relating to Contents of Part I of the Application).

(2) Part II of the application describes the existing conditions and character of the facility and surrounding area. Part II of the application shall consist of the information contained in §330.61 of this title (relating to Contents of Part II of the Application). Parts I and II of a permit application must

provide information relating to land-use compatibility under the provisions of Texas Health and Safety Code, §361.069. Part II may be combined with Part I of the application or may be submitted as a separate document. An owner or operator must submit Parts I and II of the permit application before a land-use determination is made in accordance with subsection (a) of this section.

(3) Part III of the application contains design information, detailed investigative reports, schematic designs of the facility, and required plans. Part III shall consist of the documents required in §330.63 of this title.

(4) Part IV of the application contains the site operating plan that shall discuss how the owner or operator plans to conduct daily operations at the facility. Part IV shall consist of the documents required in §330.65 of this title (relating to Contents of Part IV of the Application).

(d) Required information. The information required by this subchapter defines the basic elements for an application. All aspects of the application and design requirements must be addressed by the owner or operator, even if only to show why they are not applicable for that particular site. It is the responsibility of the applicant to provide the executive director data of sufficient completeness, accuracy, and clarity to provide assurance that operation of the site will pose no reasonable probability of adverse effects on the health, welfare, environment, or physical property of nearby residents or property owners. Failure of the owner or operator to provide complete information as required by this chapter may be cause for the executive director to return the application without further action in accordance with §281.18 and §281.19 of this title (relating to Applications Returned and Technical Review). Submission of false information shall constitute grounds for denial of the permit or registration application.

(e) Number of copies.

(1) Applications shall be initially submitted in four copies. The owner or operator shall furnish up to 18 additional copies of the application for use by required reviewing agencies, upon request of the executive director.

(2) For permit applications initially submitted to the executive director, the owner or operator shall also furnish Parts I and II, and any subsequent revisions to Parts I and II, to the regional council of governments.

(f) Preparation. Preparation of the application must conform with Texas Occupations Code, Texas Engineering Practice Act, Chapter 1001 and Texas Geoscience Practice Act, Chapter 1002.

(1) The responsible engineer shall seal, sign, and date the title page of each bound engineering report or individual engineering plan in the application and each engineering drawing as required by Texas Engineering Practice Act, §15c, and in accordance with 22 TAC §137.33 (relating to Sealing Procedures).

(2) The responsible geoscientist shall seal, sign, and date applicable items as required by Texas Geoscience Practice Act, §6.13(b), and in accordance with 22 TAC §851.156 (relating to Geoscientist's Seals).

(3) Applications that have not been sealed shall be considered incomplete for the

intended purpose and shall be returned to the owner or operator.

(g) Application format.

(1) Applications shall be submitted in three-ring, "D"-ring, loose-leaf binders.

(2) The title page shall show the name of the project; the municipal solid waste permit application number, if known; the name of the owner and operator; the location by city and county; the date the part was prepared; and, if appropriate, the number and date of the revision. It shall be sealed as required by the Texas Engineering Practice Act.

(3) The table of contents shall list and give the page numbers for the main sections of the application. It shall be sealed as required by the Texas Engineering Practice Act.

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

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

(6) Revisions shall have the revision date and note that the sheet is revised in the header or footer of each revised sheet. The revised text shall be marked to highlight the revision.

(7) Dividers and tabs are encouraged.

(h) Application drawings.

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

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

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

(4) Each drawing shall have a:

(A) dated title block;

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

(C) revision block;

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

(E) drawing number and a page number.

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

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

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

(C) a legend.

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

(i) Posting application information.

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

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

(3) For applications for new permits or major amendments, an owner or operator shall post notice signs at the site within 30 days of the executive director's receipt of an application. This sign posting is for informational purposes only. Signs must:

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

(B) identify as appropriate that the application is for a proposed permitted facility or an amendment to a permitted facility;

(C) include the words "For further information on how the public may participate in Texas Commission on Environmental Quality (TCEQ) permitting matters, contact TCEQ," the toll free telephone number for the Office of Public Assistance, and the agency's Web site address ;

(D) include the name and address of the owner or operator;

(E) include the telephone number of the owner or operator; and

(F) remain in place and legible until the close of the final comment period.

(4) Signs must be located within ten feet of every property line bordering a public

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

(5) The owner or operator shall also post signs at the facility in an alternative language when the alternative language requirements in §39.405(h)(2) of this title (relating to General Notice Provisions) are met.

(6) The executive director may approve variances from the requirements of paragraphs (3), (4), and (5) of this subsection if the owner or operator has demonstrated that it is not practical to comply with the specific requirements of those paragraphs and alternative sign posting plans proposed by the owner or operator are at least as effective in providing notice to the public. Approval from the executive director under this paragraph must be received before posting alternative signs for purposes of satisfying the requirements of this subsection.

Adopted May 7, 2008

Effective May 29, 2008

§330.59. Contents of Part I of the Application.

(a) General.

(1) Part I of the application consists of information that is required regardless of the type of facility involved. All items required by this section, §281.5 of this title (relating to Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits) and §305.45 of this title (relating to Contents of Application for Permit) must be submitted.

(2) Submittal of Part I by itself will not necessarily require publication of a notice of intent to obtain a municipal solid waste (MSW) permit under the provisions of Texas Health and Safety Code (THSC), §361.0665, or a notice concerning receipt of a permit application under the provisions of THSC, §361.079.

(3) For a permit application, submittal of Part I only will not allow a permit application to be declared administratively complete under the provisions of THSC, §361.068; §281.3 of this title (relating to Initial Review); and §281.18 of this title (relating to Applications Returned).

(b) Facility location. The owner or operator shall:

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

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

(3) provide the longitudinal and latitudinal geographic coordinates of the facility.

(c) Maps.

(1) General. The maps submitted as a group shall show the elements contained in §305.45 of this title and the following:

(A) latitudes and longitudes; and

(B) the property boundary of the facility.

(2) General location maps. These maps shall be all or a portion of county maps prepared by Texas Department of Transportation (TxDOT). At least one general location map shall be at a scale of one-half inch equals one mile. If TxDOT publishes more detailed maps of the proposed facility area, the more detailed maps shall also be included in Part I. The latest revision of all maps shall be used.

(3) Land ownership map with accompanying landowners list.

(A) These maps shall comply with the requirements in §281.5 of this title by locating the property owned by adjacent and potentially affected landowners. The maps should show all property ownership within 1/4 mile of the facility, and all mineral interest ownership under the facility.

(B) The adjacent and potentially affected landowners' list shall be keyed to the land ownership maps and shall give each property owner's name and mailing address. The list shall comply with the requirements of §281.5 of this title, and shall include all property owners within 1/4 mile of the facility, and all mineral interest ownership under the facility. Property and mineral interest owners' names and mailing addresses derived from the real property appraisal records as listed on the date that the application is filed will comply with this paragraph. Notice of an application is not defective if property owners or mineral interest owners did not receive notice because they were not listed in the real property appraisal records. The list shall also be provided in electronic form.

(d) Property owner information. Property owner information shall include the following:

(1) the legal description of the facility;

(A) the legal description of the property and the county, book, and page number or other generally accepted identifying reference of the current ownership record;

(B) for property that is platted, the county, book, and page number or other generally accepted identifying reference of the final plat record that includes the acreage encompassed in the application and a copy of the final plat, in addition to a written legal description;

(C) a boundary metes and bounds description of the facility signed and sealed by a registered professional land surveyor; and

(D) drawings of the boundary metes and bounds description; and

(2) a property owner affidavit signed by the owner that includes the following:

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

(B) for facilities where waste will remain after closure, acknowledgment that the owner has a responsibility to file with the county deed records an affidavit to the public advising that the land will be used for a solid waste facility prior to the time that the facility actually begins operating as a municipal solid waste landfill facility, and to file a final recording upon completion of disposal operations and closure of the landfill units in accordance with §330.19 of this title (relating to Deed Recordation); and

(C) acknowledgment that the facility owner or operator and the State of Texas shall have access to the property during the active life and post-closure care period, if required, after closure for the purpose of inspection and maintenance.

(e) Legal authority. The owner and operator shall provide verification of their legal status as required by §281.5 of this title. Normally, this shall be a one-page certificate of incorporation issued by the secretary of state. The owner or operator shall list all persons having over a 20% ownership in the proposed facility.

(f) Evidence of competency. Requirements for demonstrating evidence of competency are as follows.

(1) The owner or operator shall submit a list of all Texas solid waste sites that the owner or operator has owned or operated within the last ten years. The site name, site type, permit or registration number, county, and dates of operation shall also be submitted.

(2) The owner or operator shall submit a list of all solid waste sites in all states, territories, or countries in which the owner or operator has a direct financial interest. The type of site shall be identified by location, operating dates, name, and address of the regulatory agency, and the name under which the site was operated.

(3) The executive director shall require that a licensed solid waste facility supervisor, as defined in Chapter 30 of this title (relating to Occupational Licenses and Registrations), be employed before commencing facility operation.

(4) The names of the principals and supervisors of the owner's or operator's organization shall be provided, together with previous affiliations with other organizations engaged in solid waste activities.

(5) For landfill permit applications only, evidence of competency to operate the facility shall also include landfilling and earthmoving experience if applicable, and other pertinent experience, or licenses as described in Chapter 30 of this title possessed by key personnel, and the number and size of each type of equipment to be dedicated to facility operation.

(6) For mobile liquid waste processing units, the owner or operator shall submit a list of

all solid waste, liquid waste, or mobile waste units that the owner or operator has owned or operated within the past five years. The owner or operator shall submit a list of any final enforcement orders, court judgments, consent decrees, and criminal convictions of this state and the federal government within the last five years relating to compliance with applicable legal requirements relating to the handling of solid or liquid waste under the jurisdiction of the commission or the United States Environmental Protection Agency. Applicable legal requirement means an environmental law, regulation, permit, order, consent decree, or other requirement.

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

(h) Application fees.

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

(2) For a development permit or registration over a closed municipal solid waste landfill, THSC, §361.532, requires the Texas Commission on Environmental Quality (TCEQ) to charge an application fee equal to the actual cost of reviewing the application prior to the issuance of a development permit. The owner or operator shall submit an initial application fee of \$2,500 to be submitted in the form of a check or money order made payable to the TCEQ. Upon completion of the review process, including the public meeting, the executive director shall present the owner or operator with a refund for an overcharge, or an invoice for an undercharge.

Adopted May 7, 2008

Effective May 29, 2008

§330.61. Contents of Part II of the Application.

(a) Existing conditions summary. The owner or operator shall determine and report to the executive director any site-specific conditions that require special design considerations and possible mitigation of conditions identified in subsections (h) - (o) of this section. The owner or operator may discuss any additional land-use, environmental, or special issues in an existing conditions summary.

(b) Waste acceptance plan.

(1) The owner or operator shall identify the sources and characteristics of wastes (i.e., residential, commercial, grease trap, grit trap, soluble sludges, septage, special wastes, Class 2 or Class 3 industrial solid wastes, compost feedstocks, etc.) proposed to be received for storage, processing, or disposal. Municipal solid waste facilities may not receive regulated hazardous waste. If a waste constituent or characteristic could be a limiting parameter that may impact or influence the design and operation of the facility, the owner or operator shall specify parameter limitations of each type of waste to be managed by the facility, which may include constituent concentrations and characteristics such as pH, fats, oil and grease concentrations, total suspended solids, chemical oxygen demand, biochemical oxygen demand, organic and metal constituent concentrations, water content, or other constituents. The owner or operator shall include:

(A) a brief description of the general sources and generation areas contributing wastes to the facility. This description shall include an estimate of the population or population equivalent served by the facility. Additionally, if applicable, a descriptive narrative must be included that describes the percentage of incoming waste that must be recovered and its intended use;

(B) for transfer stations, the maximum amount of solid waste to be received daily and annually projected for five years, the maximum amount of solid waste to be stored, the maximum and average lengths of time that solid waste is to remain at the facility, and the intended destination of the solid waste received at this facility; and

(C) for landfills, an estimated maximum annual waste acceptance rate for the facility projected for five years.

(2) For registration applications, this information shall also establish why a facility qualifies for a registration in accordance with §330.9 of this title (relating to Registration Required).

(c) General location maps. The owner or operator shall provide maps in addition to those required by §330.59(c) of this title (relating to Contents of Part I of the Application) as necessary to accurately show proximity to surrounding features:

- (1) the prevailing wind direction with a wind rose;
- (2) all known water wells within 500 feet of the proposed permit boundary with the state well numbering system designation for Water Development Board "located wells";
- (3) all structures and inhabitable buildings within 500 feet of the proposed facility;
- (4) schools, licensed day-care facilities, churches, hospitals, cemeteries, ponds, lakes, and residential, commercial, and recreational areas within one mile of the facility;
- (5) the location and surface type of all roads within one mile of the facility that will normally be used by the owner or operator for entering or leaving the facility;
- (6) latitudes and longitudes;
- (7) area streams;
- (8) airports within six miles of the facility;
- (9) the property boundary of the facility;
- (10) drainage, pipeline, and utility easements within or adjacent to the facility;
- (11) facility access control features; and

(12) archaeological sites, historical sites, and sites with exceptional aesthetic qualities adjacent to the facility.

(d) Facility layout maps. A map or set of maps showing:

(1) the outline of the units;

(2) general locations of main interior facility roadways, and for landfill units, the general locations of main interior facility roadways that can be used to provide access to fill areas ;

(3) locations of monitor wells;

(4) locations of buildings;

(5) any other graphic representations or marginal explanatory notes necessary to communicate the proposed construction sequence of the facility;

(6) fencing;

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

(8) all site entrance roads from public access roads; and

(9) for landfill units:

(A) sectors with appropriate notations to communicate the types of wastes to be disposed of in individual sectors;

(B) the general sequence of filling operations;

(C) sequence of excavations and filling;

(D) dimensions of cells or trenches; and

(E) maximum waste elevations and final cover.

(e) General topographic maps. The owner or operator shall submit United States Geological Survey 7 1/2-minute quadrangle sheets or equivalent for the facility. At least one general topographic map shall be at a scale of one inch equals 2,000 feet.

(f) Aerial photograph.

(1) The owner or operator shall submit an aerial photograph approximately nine inches by nine inches with a scale within a range of one inch equals 1,667 feet to one inch equals 3,334 feet and showing the area within at least a one-mile radius of the site boundaries. The site boundaries and actual fill areas shall be marked.

(2) A series of aerial photographs can be used to show growth trends.

(3) If submitted, digital prints and photocopies of photographs must be legible.

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

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

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

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

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

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

(5) a description and discussion of all known wells within 500 feet of the proposed facility. Well density may be considered for assessment of compatibility; and

(6) any other information requested by the executive director.

(i) Transportation. The owner or operator shall:

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

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

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

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

(5) for landfill units and landfill mining operations, analyze the impact of the facility upon airports in accordance with §330.545 of this title (relating to Airport Safety). The owner or operator shall submit documentation of coordination with the Federal Aviation Administration for compliance with airport location restrictions.

(j) General geology and soils statement. The reports prepared under this subsection must meet the following requirements:

(1) discuss in general terms the geology and soils of the proposed site;

(2) for landfills, identify and provide data on fault areas located within the proposed site in accordance with §330.555 of this title (relating to Fault Areas);

(3) for landfills, identify and provide data on seismic impact zones in accordance with §330.557 of this title (relating to Seismic Impact Zones); and

(4) for landfills, identify and provide data on unstable areas in accordance with §330.559 of this title (relating to Unstable Areas).

(k) Groundwater and surface water. The owner or operator shall submit:

(1) data about the site-specific groundwater conditions at and near the site;

(2) data on surface water at and near the site; and

(3) information demonstrating how the municipal solid waste facility will comply with applicable Texas Pollutant Discharge Elimination System (TPDES) storm water permitting requirements and the Clean Water Act, §402, as amended. This information may include, but is not limited to:

(A) a certification statement indicating the owner/operator will obtain the appropriate TPDES permit coverage when required; or

(B) a copy of the permit number for coverage under an individual wastewater permit.

(l) Abandoned oil and water wells.

(1) The owner or operator shall identify the location of any and all existing or abandoned water wells situated within the facility. Water wells necessary for supply for operations at the landfill may remain in use as long as the wells are located outside of the groundwater monitoring well network, and are not subject to impact from landfill operations. Water wells that will be used for supply at the landfill that are located inside of the groundwater monitoring network, but outside the landfill unit boundary, may be used if identified and approved in the facility permit. For all other facility water wells, the owner or operator shall provide, within 30 days prior to construction, the executive director with written certification that all such wells have been capped, plugged, and closed in accordance with all applicable rules and regulations of the commission or other state agency.

(2) The owner or operator shall identify the location of any and all existing or abandoned on-site crude oil or natural gas wells, or other wells associated with mineral recovery that are under the jurisdiction of the Railroad Commission of Texas. The owner or operator shall provide the executive director with written certification that these wells have been properly capped, plugged, and closed in accordance with all applicable rules and regulations of the Railroad Commission of Texas at the time of application. Producing crude oil or natural gas wells that do not affect or hamper landfill operations may remain in their current state, if identified in the permit for the facility.

(m) Floodplains and wetlands statement. The floodplains and wetlands statement must:

(1) provide data on floodplains in accordance with Chapter 301, Subchapter C of this title (relating to Approval of Levees and Other Improvements);

(2) include a wetlands determination under applicable federal, state, and local laws and discuss wetlands in accordance with §330.553 of this title (relating to Wetlands). For the purpose of this subsection, demonstration can be made by providing evidence that the facility has a Corps of Engineers permit for the use of any wetlands area; and

(3) identify wetlands located within the facility boundary.

(n) Endangered or threatened species.

(1) The owner or operator shall consider the impact of a solid waste disposal facility upon endangered or threatened species. The facility and the operation of the facility shall not result in the destruction or adverse modification of the critical habitat of endangered or threatened species, or cause or contribute to the taking of any endangered or threatened species.

(2) For landfill applications, the owner or operator shall submit Endangered Species Act compliance demonstrations as required under state and federal laws and determine whether the facility is in the range of endangered or threatened species. If the facility is located in the range of endangered or threatened species, the owner or operator shall have a biological assessment prepared by a qualified biologist in accordance with standard procedures of the United States Fish and Wildlife Service and the Texas Parks and Wildlife Department to determine the effect of the facility on the endangered or threatened species. Where a previous biological assessment has been made for another project in the general vicinity, a copy of that assessment may be submitted for evaluation. The United States Fish and Wildlife Service and the Texas Parks and Wildlife Department shall be contacted for locations and specific data relating to endangered and threatened species in Texas.

(o) Texas Historical Commission review. The owner or operator shall submit a review letter from the Texas Historical Commission documenting compliance with the Natural Resources Code, Chapter 191, Texas Antiquities Code.

(p) Council of governments and local government review request. The owner or operator shall submit documentation that Parts I and II of the application were submitted for review to the applicable council of governments for compliance with regional solid waste plans. The owner or operator shall also submit documentation that a review letter was requested from any local governments as appropriate for compliance with local solid waste plans. A review letter is not a prerequisite to a final determination on a permit or registration application.

Adopted March 1, 1006

Effective March 27, 2006

§330.63. Contents of Part III of the Application.

(a) Site development plan. This plan must include criteria that in the selection and design of a facility will provide for the safeguarding of the health, welfare, and physical property of the people and the environment through consideration of geology, soil conditions, drainage, land use, zoning, adequacy of access roads and highways, and other considerations as the specific facility dictates. The site development plan must include the items listed in this section.

(b) General facility design.

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

(2) Waste movement. The owner or operator shall submit a generalized process design and working plan of the overall facility that includes, at a minimum:

(A) flow diagrams indicating the storage, processing, and disposal sequences for the various types of wastes and feedstocks received;

(B) schematic view drawings showing the various phases of collection, separation, processing, and disposal as applicable for the types of wastes and feedstocks received at the facility;

(C) proposed ventilation and odor control measures for each storage, separation, processing, and disposal unit;

(D) generalized construction details of all storage and processing units and ancillary equipment (i.e., tanks, foundations, sumps, etc.) with regard to approximate dimensions and capacities, construction materials, vents, covers, enclosures, protective coatings of surfaces, etc. Performance data on all units shall be provided;

(E) generalized construction details of slab and subsurface supports of all storage and processing components;

(F) locations and engineering design details of all containment dikes or walls (with indicated freeboard) proposed to enclose all storage and processing components and all loading and unloading areas;

(G) plans for the storage of grease, oil, and sludge on site including determinations of maximum periods of time all separated materials will remain on site and the ultimate disposition of such materials off site;

(H) proposed disposition of effluent resulting from all processing operations;
and

(I) for transfer stations, provide designs for noise pollution control.

(3) Sanitation. The owner or operator shall describe how solid waste processing facilities will be designed to facilitate proper cleaning. This may be accomplished by:

(A) controlling surface drainage in the vicinity of the facility to prevent surface water runoff onto, into, and off the treatment area;

(B) constructing walls and floors in operating areas of masonry, concrete, or other hard-surfaced materials that can be hosed down and scrubbed;

(C) providing necessary connections and equipment to permit thorough cleaning with water or steam; and

(D) providing adequate floor or sump drains to remove wash water.

(4) Water pollution control. The owner or operator shall describe how all liquids resulting from the operation of solid waste processing facilities will be disposed of in a manner that will not cause surface water or groundwater pollution. The owner or operator shall provide for the treatment of wastewaters resulting from the process or from cleaning and washing and specify how the procedure for wastewater disposal is in compliance with the rules of the commission.

(5) Endangered species protection. If necessary, the owner or operator shall describe how the facility will be designed to protect endangered species.

(c) Facility surface water drainage report. The owner or operator of a municipal solid waste (MSW) facility shall include a statement that the facility design complies with the requirements of §330.303 of this title (relating to Surface Water Drainage for Municipal Solid Waste Facilities). Additionally, applications for landfill and compost units shall include a surface water drainage report to satisfy the requirements of Subchapter G of this chapter (relating to Surface Water Drainage) and shall include the following.

(1) Drainage analyses. The owner or operator shall submit the following information and analyses:

(A) drawing(s) showing the drainage areas and drainage calculations;

(B) designs of all drainage facilities within the facility area, including such features as typical cross-sectional areas, ditch grades, flow rates, water surface elevation, velocities, and flowline elevations along the entire length of the ditch;

(C) sample calculations provided to verify that existing drainage patterns will not be adversely altered;

(D) a description of the hydrologic method and calculations used to estimate peak flow rates and runoff volumes including justification of necessary assumptions:

(i) the 25-year rainfall intensity used for facility design including the source of the data; all other data and necessary input parameters used in conjunction with the selected hydrologic method and their sources should be documented and described;

(ii) hydraulic calculations and designs for sizing the necessary collection, drainage, and/or detention facilities;

(iii) discussion and analyses to demonstrate that existing drainage patterns will not be adversely altered as a result of the proposed landfill development; and

(iv) structural designs of the collection, drainage, and/or storage facilities.

(2) Flood control and analyses. The owner or operator shall:

(A) identify whether the site is located within a 100-year floodplain. If applicable, indicate 100-year floodplain on the drawing in paragraph (1)(A) of this subsection;

(B) provide the source of all data for such determination and include a copy of the relevant Federal Emergency Management Agency (FEMA) flood map or the calculations and maps used where a FEMA map is not used. FEMA maps are prima facie evidence of floodplain locations. Information shall also be provided identifying the 100-year flood level and any other special flooding factors (e. g., wave action) that must be considered in designing, constructing, operating, or maintaining the proposed facility to withstand washout from a 100-year flood. The boundaries of the proposed landfill facility should be shown on the floodplain map;

(C) if the site is located within the 100-year floodplain, provide information detailing the specific flooding levels and other events (e.g., design hurricane projected by Corps of Engineers) that impact the flood protection of the facility. Data should be that required by §§301.33 - 301.36 of this title (relating to Preliminary Plans: Data To Be Submitted, Criteria For Approval of Preliminary Plans; Additional Information; Plans To Bear Seal of Engineer). The owner or operator shall include cross-sections or elevations of landfill levees shown tied into contours;

(D) for construction in a floodplain, submit, where applicable:

(i) approval from the governmental entity with jurisdiction under Texas Water Code, §16.236, as implemented by Chapter 301 of this title (relating to Levee Improvement Districts, District Plans of Reclamation, and Levees and Other Improvements);

(ii) a floodplain development permit from the city, county, or other agency with jurisdiction over the proposed improvements;

(iii) a Conditional Letter of Map Amendment from FEMA; and

(iv) a Corps of Engineers Section 404 Specification of Disposal Sites for Dredged or Fill Material permit for construction of all necessary improvements.

(d) Waste management unit design.

(1) Storage and transfer units. The owner or operator shall:

(A) describe how the solid waste management facility will be designed for the rapid processing and minimum detention of solid waste at the facility. The owner or operator shall specify that all solid waste capable of creating public health hazards or nuisances be stored indoors only and processed or transferred promptly and shall not be allowed to result in nuisances or public health hazards. If the facility is in continuous operation, such as for resource or energy recovery, the owner or operator shall provide design features for wastes storage units that will prevent the creation of nuisances or public health hazards due to odors, fly breeding, or harborage of other vectors;

(B) design the units to control and contain spills and contaminated water from leaving the facility. The design shall be sufficient to control and contain a worst-case spill or release from the unit. Unenclosed containment areas shall also account for precipitation from a 25-year, 24-hour rainfall event; and

(C) specify the maximum allowable period of time that unprocessed and processed wastes are to remain on site.

(2) Incineration units. The owner or operator shall provide waste feed rates, an estimate of the amount and planned method for testing and final disposal of incinerator ash, an estimate of the volume of quench or process water, and the planned method of treatment and disposal of such water.

(3) Surface impoundments. The owner or operator shall provide:

(A) design specifications for surface impoundments, including a plan view and cross-section of the impoundment;

(B) the minimum freeboard to be maintained and the basis of the design to prevent overtopping resulting from normal or abnormal operations; overfilling; wind and wave action; rainfall; run-on (if allowed); malfunctions of level controllers, alarms, and other equipment; and human error. The owner or operator shall show that adequate freeboard will be available to prevent overtopping from a 25-year, 24-hour rainfall event; and/or

(C) in accordance with §330.339 of this title (relating to Liner Quality Control Plan), a liner quality control plan prepared in accordance with Subchapter H of this chapter (relating to Liner System Design and Operation).

(4) Landfill units. The owner or operator shall specify:

(A) provisions for all-weather operation, e.g., all-weather road, wet-weather pit, alternative disposal facility, etc., and provisions for all-weather access from publicly owned routes to the disposal facility and from the entrance of the facility to unloading areas used during wet weather. Interior access road locations and the type of surfacing shall be indicated on a facility plan. The roads within the facility shall be designed so as to minimize the tracking of mud onto the public access road;

(B) the landfill method proposed, e.g., moving-face cell or trench, area fill, or combination;

(C) elevation of deepest excavation, maximum elevation of waste, maximum elevation of final cover;

(D) a calculation of the estimated rate of solid waste deposition and operating life of the landfill unit. As a general rule, 10,000 people with a per capita collection rate of five pounds per day, dispose of 10 - 15 acre-feet of solid waste in one year;

(E) landfill unit cross-sections consisting of plan profiles across the facility clearly showing the top of the levee, top of the proposed fill (top of the final cover), maximum elevation of proposed fill, top of the wastes, existing ground, bottom of the excavations, side slopes of trenches and fill areas, gas vents or wells, and groundwater monitoring wells, plus the initial and static levels of any water encountered. The owner or operator shall provide a sufficient number of cross-sections, both latitudinally and longitudinally, so as to accurately depict the existing and proposed depths of all fill areas within the site. The plan portion shall be shown on an inset key map. The fill cross-sections shall go through or very near the soil borings in order that the boring logs obtained from the soils report can also be shown on the profile;

(F) construction and design details of compacted perimeter or toe berms that are proposed in conjunction with aboveground (aerial-fill) waste disposal areas shall be included in the fill cross-sections; and

(G) a liner quality control plan prepared in accordance with Subchapter H of this chapter.

(5) Arid exemption landfill application information. Owners or operators of new, existing, and lateral expansions of small MSW landfill facilities that meet the criteria in §330.5(b) of this title (relating to Classification of Municipal Solid Waste Facilities) shall submit a certification of eligibility to the executive director and place a copy of the certification in the operating record. The certification shall be signed by a principal executive officer, a ranking elected official, or an independent professional engineer licensed to practice in the State of Texas. The certification must contain the following information:

(A) a statement certifying that the small MSW landfill facility meets all requirements contained in §330.5(b) of this title for exemptions from Subchapter H of this chapter (relating to Liner System Design and Operation) and Subchapter J of this chapter (relating to Groundwater Monitoring and Corrective Action);

(B) documentation that the small MSW landfill facility receives for disposal an annual average of less than 20 tons per day of authorized types of waste in a Type IAE landfill unit and/or less than 20 tons per day of authorized types of waste in a Type IVAE landfill unit for a total waste acceptance rate less than 40 tons per day for the facility, based upon the most recent four reporting quarters or a certification that programs have been put in place, or will be implemented, to reduce the annual average to less than 20 tons per day based on an annual average for each landfill unit type within one year;

(C) documentation that there are no practicable waste management alternatives available. The documentation shall demonstrate one of the following:

(i) additional costs of available alternatives are estimated to exceed 1.0% of the owner's or operating community's budget for all public services;

(ii) haul distances to alternative sites are unreasonably long; or

(iii) all other alternatives are not feasible to implement, given the community location and economic condition; and

(D) documentation that the small MSW landfill unit receives less than or equal to 25 inches of average annual precipitation as determined from precipitation data for the nearest official precipitation recording station for the most recent 30-year reporting period.

(6) Type V mobile liquid waste processing units. The owner or operator shall provide the following:

(A) documentation of affirmative local government approval or acceptance of the mobile unit operation, including conformity with local ordinances, local rules, or requirements set forth by the treatment facility for the discharge, including local limits, zoning restrictions, permits, licenses, authorizations, etc. These regulations do not grant authorization for operation of mobile liquid waste processing units in noncompliance with local government ordinances and regulations or without the express approval of the local wastewater authority. Discharge from a mobile liquid waste processing unit is allowed only at selected disposal points selected by the local treatment facility permitted under Texas Water Code, Chapter 26, so that they can be monitored by the local treatment facility; and

(B) written approval from the receiving treatment facility permitted under Texas Water Code, Chapter 26.

(7) Type IX energy, material, gas recovery for beneficial use, or landfill mining waste processing units. The owner or operator shall provide:

(A) For wastes to be excavated, a test pit evaluation report prepared by an engineer. Prior approval of a test pit plan must be obtained from the executive director before excavation of test pits including location and depth of all test pits, including a discussion and information on the following:

(i) a description of the characteristics of waste observed in test pits excavated on the site to include the percent of paper, plastics, ferrous metal, other metal, glass, other constituents, and soil fraction by weight;

(ii) a design for the test pits to extend four feet beneath the waste or to a depth authorized by the executive director and information submitted to include a Toxicity Characteristic Leaching Procedure (TCLP) of the soil to characterize the soil beneath the site. Liners if present shall not be disrupted;

(iii) a TCLP analysis of each representative type of waste excavated. Additionally, waste excavated from each test pit must be analyzed for asbestos and polychlorinated biphenyls (PCBs). Consideration should be given to the analysis of waste material from each test pit for hazardous waste constituents;

(iv) a determination as to a sufficient number of test pits to establish the properties of the waste. A site of five acres or less must have a minimum of three test pits. Sites larger than five acres must have three test pits plus one for every additional five acres or fraction of an acre. The number of test pits shall be approved by the executive director prior to making the pits. The test pits should be sufficiently large enough to provide representative information;

(v) a description of how all test pits will be backfilled with clean high plasticity or low plasticity clay. The excavation shall be backfilled to exceed the existing grade and provide positive drainage;

(vi) a cross-section drawing using the information from the test pits to depict the top and bottom elevations of the landfill;

(vii) a plan view map depicting the location and extent (vertical and lateral) of the waste unit and proposed extent of mining/recovery operations. In areas with liners, mining operations should not extend below the top of the protective cover of the liner. In areas where no liner exists, excavation operations may extend below the waste;

(viii) an evaluation of historical records of landfill operations, where available, to determine such things as hazardous waste potential, receipt of special waste, types of waste received, special waste disposal areas, construction or demolition waste disposal areas, methane and leachate records, age, volume, disposal methods, existence of liners, gas collection systems, and leachate collection systems; and

(ix) a description of how all waste removed in test pit evaluation will be disposed of in a permitted landfill;

(B) a process description to include:

(i) a list of the typical materials intended for processing along with the anticipated volume to be processed. This description shall also contain an estimate of the daily quantity of material to be processed at the facility along with a description of the proposed process of screening for hazardous materials;

(ii) the methods of excavating the buried waste materials. The owner or operator shall indicate how the material will be handled, how long it will remain in the area, what equipment will be used, how the material will be moved from the excavation area, how the excavation area will be held to a minimum, the maximum side slopes in buried waste, and the maximum excavation area at any one time. The owner or operator shall provide the sequence of excavation;

(iii) the processes used to recover reusable or recyclable material or energy. The narrative shall include any water addition, processing rates, equipment, and mass balance or energy balance calculations;

(iv) how any process water will be handled and disposed of if a wet mining process is to be used;

(v) a complete narrative on product distribution to include items such as disposition of material or energy recovered and probable use of soils on site and off site; and

(vi) a process diagram that depicts the general process;

(C) a description of liner system used for excavated waste storage, processing, and screening areas to control seepage and runoff. The liner shall be covered with a material designed to withstand normal traffic from the processing operations; and

(D) a description of how waste excavation activities will comply with the minimum design and operation requirements of:

(i) §330.149 (relating to Odor Management Plan);

(ii) §330.151 (relating to Disease Vector Control);

(iii) §330.165 (relating to Landfill Cover); and

(iv) §330.167 (relating to Poned Water).

(8) Compost units. The owner or operator shall provide:

(A) for mechanical composting systems, a detailed engineering description of the system and the manufacturer's performance data;

(B) facility layout, including calculations for area requirements;

(C) a description of the movement of the material as it leaves the tipping area indicating how the material is incorporated into the composting process and what handling techniques are used all the way through to the post-processing area. The narrative must include:

(i) processing rates;

(ii) equipment;

(iii) mass balance calculations;

(iv) use of bulking agents, moisture control, or feed amendments;

(v) process monitoring methods;

(vi) temperature range and resident time;

(vii) storage of compost for curing after the primary composting operation; and

(viii) provision for additional drying and screening;

(D) a narrative on the post-processing process, including post-processing times, identification and segregation of product, storage of product, and quality assurance and quality control; and

(E) a narrative on product distribution including items such as end-product quantities, anticipated final grades, packaging, labeling, loading, marketing, distribution, tracking, and delivery of composted material.

(9) Type VI waste processing demonstration facilities.

(A) The facility size shall be limited to a liquid waste processing rate no greater than 10,000 gallons per day.

(B) The facility design and operation shall be coordinated with a consultant connected with an accredited college or university or with a consultant that has demonstrated the ability to carry out scientific experiments for demonstrating new and unproven waste handling methods and submitted to the executive director. The owner or operator shall submit to the executive director an annual and final status report to document the viability of the method being demonstrated. The report, at a minimum, must document the effluent standards and solid waste standards achieved.

(C) The owner or operator may request a variance.

(i) In specific cases, the executive director may approve a variance from the requirements of this chapter if the variance is not contrary to safeguarding the health, welfare, and physical property of the people and to protecting the environment. A variance may not be approved concerning the procedural requirements of this chapter.

(ii) A request for a variance must be submitted in writing to the executive director. The request may be made in an application for a registration. Any approval of a variance must be in writing from the executive director.

(e) Geology report. This portion of the application applies to owners or operators of MSW landfills, compost units, and if otherwise requested by the executive director. The geology report shall be prepared and signed by a qualified groundwater scientist. Previously prepared documents may be submitted but must be supplemented as necessary to provide the requested information. Sources and references for information must be provided. The geology report must contain the following information:

(1) a description of the regional geology of the area that includes:

(A) a geologic map of the region with text describing the stratigraphy and lithology of the map units. An appropriate section of a published map series such as the Geologic Atlas of Texas prepared by the Bureau of Economic Geology is acceptable; and

(B) a description of the generalized stratigraphic column in the facility area from the base of the lowermost aquifer capable of providing usable groundwater, or from a depth of 1,000 feet, whichever is less, to the land surface. The geologic age, lithology, variations in lithology, thickness, depth, geometry, hydraulic conductivity, and depositional history of each geologic unit should be described based upon available geologic information. Regional stratigraphic cross-sections should be provided;

(2) a description of the geologic processes active in the vicinity of the facility that includes an identification of any faults and subsidence in the area of the facility. The information about faulting and subsidence shall include at least that required in §330.555(b) and §330.559 of this title (relating to Fault Areas and Unstable Areas);

(3) a description of the regional aquifers in the vicinity of the facility based upon published and open-file sources that provides:

(A) aquifer names and their association with geologic units described in paragraph (2) of this subsection;

(B) the composition of the aquifer(s);

(C) the hydraulic properties of the aquifer(s);

(D) information on whether the aquifers are under water table or artesian conditions;

(E) information on whether the aquifers are hydraulically connected;

(F) a regional water-table contour map or potentiometric surface map for each aquifer, if available;

(G) an estimate of the rate of groundwater flow;

(H) typical values or a range of values for total dissolved solids content of groundwater from the aquifers;

(I) identification of areas of recharge to the aquifers within five miles of the site; and

(J) the present use of groundwater withdrawn from aquifers in the vicinity of the facility. The identification, location, and aquifer of all water wells within one mile of the property boundaries of the facility shall be provided;

(4) the results of investigations of subsurface conditions at a particular waste management unit. This report must describe all borings drilled on site to test soils and characterize groundwater and must include a site map drawn to scale showing the surveyed locations and elevations of the borings. Boring logs must include a detailed description of materials encountered including any discontinuities such as fractures, fissures, slickensides, lenses, or seams. Geophysical logs of the boreholes may be useful in evaluating the stratigraphy. Each boring must be presented in the form of a log that contains, at a minimum, the boring number; surface elevation and location coordinates; and a columnar section with text showing the elevation of all contacts between soil and rock layers, description of each layer using the unified soil classification, color, degree of compaction, and moisture content. A key explaining the symbols used on the boring logs and the classification terminology for soil type, consistency, and structure must be provided. The boring plan, including locations and depths of all proposed borings, shall be approved by the executive director prior to initiation of the work.

(A) A sufficient number of borings shall be performed to establish subsurface stratigraphy and to determine geotechnical properties of the soils and rocks beneath the facility. Other types of samples may also be taken to provide geologic and geotechnical data. The number of borings necessary can only be determined after the general characteristics of a site are analyzed and will vary depending on the heterogeneity of subsurface materials. Locations with stratigraphic complexities such as non-uniform beds that pinch out, vary significantly in thickness, coalesce, or grade into other units, will require a significantly greater degree of subsurface investigation than areas with simple geologic frameworks.

(B) Borings shall be sufficiently deep enough to allow identification of the uppermost aquifer and underlying hydraulically interconnected aquifers. Borings shall penetrate the uppermost aquifer and all deeper hydraulically interconnected aquifers and be deep enough to identify the aquiclude at the lower boundary. All the borings shall be at least five feet deeper than the elevation of the deepest excavation. In addition, at least the number of borings shown on the Table of Borings shall be drilled to a depth at least 30 feet below the deepest excavation planned at the waste management unit, unless the executive director approves a different depth. If no aquifers exist within 50 feet of the elevation of the deepest excavation, at least one test hole shall be drilled to the top of the first perennial aquifer beneath the site, if sufficient data does not exist to accurately locate it. The executive director may accept data equivalent to a deep boring on the site to determine information for aquifers more than 50 feet below the site. Aquifers more than 300 feet below the lowest excavation and where the estimated travel times for constituents to the aquifer are in excess of 30 years plus the estimated life of the site need not be identified through borings.

TABLE OF BORINGS

Size of Area in Acres	Number of Borings	Min. No. of Borings 30 Feet below the Elev. of Deepest Excavation
5 or less	2-4	2
5-10	4-6	3
10-20	6-10	5
20-50	10-15	7
50-100	15-20	7-12

Size of Area in Acres	Number of Borings	Min. No. of Borings 30 Feet below the Elev. of Deepest Excavation
100-150	20-23	12-13
150-200	23-26	13-15
200-250	26-29	15-16
250-300	29-32	16-17
300-350	32-35	17-18
350-400	35-38	18-20
400-450	38-42	20-21
450-500	42-44	21-22
500-550	44-47	22-24
550-600	47-50	24-26
More than 600	Determined in consultation with the executive director	

* The executive director may approve different boring depths if site-specific conditions justify variances.

(C) All borings shall be conducted in accordance with established field exploration methods. The hollow-stem auger boring method is recommended for softer materials; coring may be required for harder rocks. Other methods shall be used as necessary to obtain adequate samples for soil testing required in this paragraph. Investigation procedures shall be discussed in the report.

(D) Installation, abandonment, and plugging of the borings in accordance with the rules of the commission.

(E) Both the number and depth of borings may be modified because of site conditions with approval of the executive director.

(F) Geophysical methods, such as electrical resistivity, may be used with authorization of the executive director to reduce the number of borings that may be necessary or to provide additional information between borings.

(G) Cross-sections must be prepared from the borings depicting the generalized strata at the facility. For small waste management units, two perpendicular cross-sections will normally suffice.

(H) A narrative that describes the investigator's interpretations of the subsurface stratigraphy based upon the field investigation shall be provided;

(5) geotechnical data that describes the geotechnical properties of the subsurface soil materials and a discussion with conclusions about the suitability of the soils and strata for the uses for which they are intended. All geotechnical tests shall be performed in accordance with industry practice and recognized procedures such as described below. A brief discussion of geotechnical test procedures including:

(A) a laboratory report of soil characteristics determined from at least one sample from each soil layer or stratum that will form the bottom and side of the proposed excavation and from those that are less than 30 feet below the lowest elevation of the proposed excavation. Additional tests shall be performed, as necessary, to provide a typical profile of soil stratification within the site. No laboratory work need be performed on highly permeable soil layers such as sand or gravel. The samples shall be tested by a competent independent third-party soils laboratory;

(B) permeability tests performed according to one of the following standards on undisturbed soil samples. Permeability tests shall be performed using tap water or .05 Normal solution of calcium sulfate (CaSO_4), and not distilled water, as the permeant. Those undisturbed samples that represent the sidewall of any proposed cell, pit, or excavation shall be tested for the coefficient of permeability on the sample's in-situ horizontal axis; all others shall be tested on the in-situ vertical axis. All test results shall indicate the type of tests used and the orientation of each tested sample. All calculations for the final coefficient of permeability tests result for each sample tested shall be included in the report:

(i) constant head with back pressure per Appendix VII of Corps of Engineers Manual EM1110-2-1906, "Laboratory Soils Testing;" American Society for Testing and Materials (ASTM) D5084 "Saturated Porous Materials Using a Flexible Wall Permeameter";

(ii) falling head per Appendix VII of Corps of Engineers Manual EM1110-2-1906, "Laboratory Soils Testing";

(iii) sieve analysis for the 200, and less than 200 fraction per ASTM D1140;

(iv) Atterberg limits per ASTM D4318; and

(v) moisture content per ASTM D2216;

(C) the depth at which groundwater was encountered and records of after-equilibrium measurements in all borings. The cross-sections prepared in response to paragraph (4)(G) of this subsection must be annotated to note the level at which groundwater was first encountered and the level of groundwater after equilibrium is reached or just prior to plugging, whichever is later. This water-level information must also be presented on all borings required by paragraph (4) of this subsection and presented in a table format in the report;

(D) records of water-level measurements in monitoring wells. Historic water-level measurements made during any previous groundwater monitoring shall be presented in a table for each well;

(E) a tabulation of all relevant groundwater monitoring data from wells on site or on adjacent MSW landfill unit(s); and

(F) identification of the uppermost aquifer and any lower aquifers that are hydraulically connected to it beneath the facility, including groundwater flow direction and rate, and the basis for such identification (i.e., the information obtained from hydrogeologic investigations of the facility area);

(6) for owners and operators seeking an arid exemption for their landfill unit designs, a groundwater certification process must be used for meeting the provisions for groundwater certification of the arid exemption, as described in §330.5(b) of this title:

(A) locate and plot the facility accurately on a topographic map (7.5-minute or 15-minute United States Geological Survey quadrangle). Draw a line to enclose all of the area within one mile of the facility boundary;

(B) visit the facility and locate by physical inspection water wells and springs in the facility area. Determine the locations and plot them on the topographic map:

(i) if no wells or springs exist within the facility area, refer to subparagraph (I) of this paragraph. Otherwise, refer to clause (ii) of this subparagraph; and

(ii) determine from appropriate records (for example, water-well drillers, pump installers, city records, underground water conservation district, Texas Water Development Board, Texas Commission on Environmental Quality, United States Geological Survey, etc.) which of the wells are completed in the shallowest aquifer. If no wells are completed in the shallowest aquifer or if the shallowest aquifer is more than 150 feet below the land surface at the facility, refer to subparagraph (I) of this paragraph. Otherwise, refer to subparagraph (C) of this paragraph;

(C) determine the groundwater gradient of the shallowest aquifer in the vicinity of the facility. This can be done by measuring stabilized water levels in wells completed in the shallowest aquifer in the facility area (from subparagraph (B)(ii) of this paragraph) or from previous hydrogeologic studies using contemporaneous stabilized water-level measurements. Care should be taken to measure water levels when nearby high-volume wells, such as irrigation wells, have not been pumped for a long enough period to allow the water level to stabilize. Where no data exist or cannot be determined, the regional gradient can be used;

(D) from springs and from the wells completed in the shallowest aquifer, select the two wells/springs downgradient of and nearest to the facility based on the findings from subparagraph (C) of this paragraph. Select a well/spring upgradient or lateral to the facility, where groundwater quality is not likely to have been affected by landfill activities and preferably not by other human activities such as oil and gas operations, feedlots, sewage treatment plants, septic systems, etc;

(E) sample the three selected wells/springs determined by subparagraphs (C) and (D) of this paragraph in accordance with accepted practices, such as described in technical guidance from the executive director. The owner or operator shall have the samples analyzed by a qualified laboratory for the following parameters:

(i) chloride;

(ii) nitrate (as N);

(iii) sulfate;

(iv) total dissolved solids;

(v) specific conductance;

(vi) pH;

(vii) chromium;

(viii) non-purgeable organic carbon; and

(ix) volatile organic compounds listed in §330.419 of this title (relating to Constituents for Detection Monitoring);

(F) if permission cannot be obtained to sample one or more of the three selected wells/springs, select one or more alternate wells/springs, within the plotted area. If fewer than three wells/springs are available, sample those that are available;

(G) if permission cannot be obtained to sample any appropriately located wells/springs, submit written documentation of the facts to the executive director. If the executive director confirms that permission cannot be obtained for sampling, the well(s) may be eliminated from consideration;

(H) compile the data from subparagraphs (A) - (F) of this paragraph in a report that includes:

(i) a map showing all known wells, springs, facility boundaries, sampling points, etc.;

(ii) a map showing the groundwater gradient and data points;

(iii) chemical analyses, showing analytical methods used;

(iv) logs and construction information for the sampled wells and description and flow rate for sampled springs;

(v) text describing methods of investigation, such as sampling and water-level measurements; and

(vi) conclusions with respect to presence or lack of evidence of groundwater contamination by the facility;

(I) where no wells or springs are present in the facility area or the shallowest water level is more than 150 feet below land surface at the facility, submit a brief report describing the facility (with a map of the area) and the method(s) of determining the lack of appropriate sampling points or depth to the shallowest aquifer. Confirmed absence of sampling points will be deemed to be "no evidence of groundwater contamination";

(J) the report shall be signed and sealed by the qualified groundwater scientist who reviewed the data and reached the conclusions;

(K) if there is no evidence of groundwater contamination by the landfill, the qualified groundwater scientist who reviewed the data and reached the conclusions shall sign and seal a statement in the following format: "I (we) have reviewed the groundwater data described in a report submitted with this certification and have found no evidence that the _____ municipal solid waste landfill located at _____ has contaminated groundwater in the uppermost aquifer"; and

(L) the executive director may accept information and data, other than described in this paragraph, as showing that there is no evidence of groundwater contamination by the landfill, if the information and data are deemed to be adequate for such a determination.

(f) Groundwater sampling and analysis plan. The groundwater sampling and analysis plan for landfills and if otherwise requested by the executive director for other MSW units must be prepared in accordance with Subchapter J of this chapter (relating to Groundwater Monitoring and Corrective Action). The groundwater sampling and analysis plan for composting operations that require a permit must be prepared in accordance with the groundwater monitoring requirements of §332.47(6)(C)(ii) of this title (relating to Permit Application Preparation). As part of this plan for Type I landfills, submit the following:

(1) on a topographic map, a delineation of the waste management area, the property boundary, the proposed point of compliance as defined under §330.3 of this title (relating to Definitions), the proposed location of groundwater monitoring wells as required under §330.403 of this title (relating to Groundwater Monitoring Systems);

(2) a description of any plume of contamination that has entered the groundwater from an MSW management unit at the time that the application was submitted. In addition:

(A) delineate the extent of the plume on the topographic map required in paragraph (1) of this subsection; and

(B) identify the concentration of each assessment constituent as defined in §330.409 of this title (relating to Assessment Monitoring Program) throughout the plume or identify the maximum concentration of each assessment constituent in the plume;

(3) an analysis of the most likely pathway(s) for pollutant migration in the event that the primary barrier liner system is penetrated. This must include any groundwater modeling data and results as described in §330.403(e)(2) of this title and consider changes in groundwater flow that are expected to result from construction of the facility;

(4) detailed plans and an engineering report describing the proposed groundwater monitoring program to be implemented to meet the requirements of §330.403 of this title;

(5) if the hazardous constituents listed in the table located in 40 Code of Federal Regulations Part 258, Appendix I, and §330.419 of this title have not been detected in the groundwater at the time of permit application, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a detection monitoring program that meets the requirements of §330.407 of this title (relating to Detection Monitoring Program for Type I Landfills). This submission must address the following items as specified in §330.407 of this title:

(A) a proposed groundwater monitoring system;

(B) background values for each monitoring parameter or constituent listed in §330.419 of this title, or procedures to calculate such values; and

(C) a description of proposed sampling, analysis, and statistical comparison procedures to be utilized in evaluating groundwater monitoring data;

(6) if the presence of hazardous constituents listed in §330.419 of this title has been detected in the groundwater at the time of the permit application, the owner or operator shall submit sufficient information, supporting data, and analyses to establish an assessment monitoring program that meets the requirements of §330.409 of this title. To demonstrate compliance with §330.409 of this title, the owner or operator shall address the following items:

(A) a description of any special wastes previously handled at the MSW facility;

(B) a characterization of the contaminated groundwater, including concentration of assessment constituents as defined in §330.409 of this title;

(C) a list of assessment constituents as defined in §330.409 of this title for which assessment monitoring will be undertaken in accordance with §330.405 of this title (relating to Groundwater Sampling and Analysis Requirements) and §330.409 of this title;

(D) detailed plans and an engineering report describing the proposed groundwater monitoring system, in accordance with the requirements of §330.405 of this title; and

(E) a description of proposed sampling, analysis, and statistical comparison procedures to be utilized in evaluating groundwater monitoring data; and

(7) if hazardous constituents have been measured in the groundwater that exceed the concentration limits established in §330.409 of this title, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a corrective action program that meets the requirements of §330.411 and §330.413 of this title (relating to Assessment of Corrective Measures and Selection of Remedy). To demonstrate compliance with §330.411 of this title, the owner or operator shall address, at a minimum, the following:

(A) a characterization of the contaminated groundwater, including concentrations of assessment constituents as defined in §330.409 of this title;

(B) the concentration limit for each constituent found in the groundwater;

(C) detailed plans and an engineering report describing the corrective action to be taken;

(D) a description of how the groundwater monitoring program will demonstrate the adequacy of the corrective action; and

(E) a schedule for submittal of the information required in subparagraphs (C) and (D) of this paragraph provided the owner or operator obtains written authorization from the executive director prior to submittal of the complete permit application.

(g) Landfill gas management plan. A facility gas management plan shall be prepared to address all of the requirements in Subchapter I of this chapter (relating to Landfill Gas Management).

(h) Closure plan. The facility closure plan shall be prepared in accordance with Subchapter K of this chapter (relating to Closure and Post-Closure). For a landfill unit, the closure plan will include a contour map showing the final constructed contour of the entire landfill to include internal drainage and side slopes plus accommodation of surface drainage entering and departing the completed fill area plus areas subject to flooding due to a 100-year frequency flood. Cross-sections shall be provided.

(i) Post-closure plan. The facility post-closure care plan shall be prepared in accordance with Subchapter K of this chapter.

(j) Cost estimate for closure and post-closure care. The owner or operator shall submit a cost estimate for closure and post-closure care in accordance with Subchapter L of this chapter (relating to Closure, Post-Closure, and Corrective Action Cost Estimates). For an existing facility, the owner or operator shall also submit a copy of the documentation required to demonstrate financial assurance as specified in Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities). For a new facility, a copy of the required documentation shall be submitted 60 days prior to the initial receipt of waste.

Adopted March 1, 2006

Effective March 27, 2006

§330.65. Contents of Part IV of the Application.

(a) The owner or operator shall submit a site operating plan. This plan will provide general operating procedures for facility management for day-to-day operations at the facility. The site operating plan must be retained during the active life of the facility. At a minimum, the site operating plan must include a description for how the items in Subchapters D and E of this chapter (relating to Operational Standards for Municipal Solid Waste Landfill Facilities; and Operational Standards for Municipal Solid Waste Storage and Processing Units) will be implemented.

(b) A facility that has an environmental management system that meets both the minimum standards described in §90.32 of this title (relating to Minimum Standards for Environmental Management Systems) and the United States Environmental Protection Agency's National Environmental Performance Track (NEPT) Program standards and is approved to operate under an environmental management system in accordance with §90.36 of this title (relating to Evaluation of an Environmental Management System by the Executive Director), is not subject to site operating plan requirements while the authorization to operate under the environmental management system remains in place. In the event the executive director terminates authorization to operate under an environmental management system, the facility will comply with the site operating plan requirements within 90 days.

(c) The owner or operator shall specify procedures for recirculating leachate or gas condensate into a landfill unit as part of the site operating plan.

(d) The owner or operator of a grease trap waste, grit trap waste, or septage processing facility shall submit information identifying any permit requirements under the Texas Pollutant Discharge Elimination System and any permit requirements imposed by other agencies (e.g., local government pretreatment or discharge authorization requirements).

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Effective March 27, 2006

§330.67. Property Rights.

(a) It is the responsibility of an owner or operator to possess or acquire a sufficient interest in or right to the use of the surface estate of the property for which a permit is issued, including the access route. The granting of a permit does neither convey any property rights or interest in either real or personal property; nor does it authorize any injury to private property, invasion of personal rights, or impairment of previous contract rights; nor any infringement of federal, state, or local laws or regulations outside the scope of the authority under which a permit is issued.

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

(c) Executive director approval or a permit will be required if any on-site operations subsequent to closure of a landfill facility involve disturbing the cover or liner of the landfill.

(d) It is also the responsibility of an owner or operator to obtain any permits or approvals that may be required by local agencies such as for building construction, discharge of uncontaminated waters into ditches under control of a drainage district, discharge of effluent into a local sanitary sewer system, etc.

Adopted March 1, 2006

Effective March 27, 2006

§330.69. Public Notice for Registrations.

(a) Notice to local governments. For mobile liquid waste processing unit registration applications only, upon filing a registration application, the owner or operator shall mail notice to the city, county, and local health department of any local government in which operations will be conducted notifying local governments that an application has been filed. Proof of mailing shall be provided to the executive director in the form of return receipts for registered mail. Mobile liquid waste processing unit registration applications are not subject to public meeting or sign-posting requirements under subsection (b) of this section.

(b) Opportunity for public meeting and posting notice signs. The owner or operator shall provide notice of the opportunity to request a public meeting and post notice signs for all registration applications not later than 45 days of the executive director's receipt of the application in accordance with the procedures contained in §39.501(c) of this title (relating to Application for Municipal Solid Waste Permit) and by posting signs at the proposed site. The owner or operator and the commission shall hold a public meeting in the local area, prior to facility authorization, if a public meeting is required based on the criteria contained in §55.154(c) of this title (relating to Public Meetings) or by Texas Health and Safety Code, §361.111(c). Notice of a public meeting shall be provided as specified in §39.501(e)(3) and (4) of this title. This section does not require the commission to respond to comments, and it does not create an opportunity for a contested case hearing. Applications for registrations filed before the comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions) become effective are subject to the former rule requirements to conduct a public meeting. Applications for registrations filed after the 2006 Revisions become effective are subject to the 2006 Revisions requirements to provide notice of the opportunity to request a public meeting. The owner, operator, or a representative authorized to make decisions and act on behalf of the owner or operator shall attend the public meeting. A public meeting conducted under this section is not a contested case hearing under the Texas Government Code, Chapter 2001, Administrative Procedure Act. At the owner's or operator's expense, a sign or signs must be posted at the site of the proposed facility declaring that the application has been filed and stating the manner in which the commission and owner or operator may be contacted for further information. Such signs must be provided by the owner or operator and must substantially meet the following requirements.

(1) Signs must:

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

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

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

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

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

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

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

(H) remain in place and legible until the period for filing a motion to overturn has expired. The owner or operator shall provide a verification to the executive director that the sign posting was conducted according to the requirements of this section; and

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

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

(3) The owner or operator shall also post signs at the facility in an alternative language when the alternative language requirements in §39.405(h)(2) of this title (relating to General Notice Provisions) are met.

(4) The executive director may approve variances from the requirements of paragraphs (1) and (2) of this subsection if the owner or operator has demonstrated that it is not practical to comply with the specific requirements of those subparagraphs and alternative sign posting plans proposed by the owner or operator are at least as effective in providing notice to the public. Approval from the executive director under this subparagraph must be received before posting alternative signs for purposes of satisfying the requirements of this paragraph.

(c) Notice of final determination. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. In accordance with §50.133(b) of this title (relating to Executive Director Action on Application or WQMP Update), if the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision). The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the land ownership map and landowners list required by §330.59 of this title (relating to Contents of Part I of the Application), and to other persons who timely filed public comment in response to public notice.

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

Adopted March 1, 2006

Effective March 27, 2006

§330.71. Duration and Limits of Registrations and Permits.

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

(b) Except as provided in subsection (f) of this section for demonstration facilities, a registration or permit is normally issued for the life of the facility but may be revoked, amended, or modified at any time if the operating conditions do not meet the minimum standards set forth in this chapter or for any other good cause.

(c) When deemed appropriate a registration or permit may be issued for a specific period of time. When an owner or operator has made timely and sufficient application for the renewal of a registration or permit, the existing registration or permit does not expire until the application has been finally determined by the commission.

(d) A registration or permit is issued to a specific person (see definition of person contained in §3.2 of this title (relating to Definitions)) and may not be transferred from one person to another without complying with the transfer approval requirements of the commission.

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

(f) Demonstration projects for liquid waste processing facilities shall be limited to a two-year period. Re-registration of a demonstration facility may be considered only if the new method being demonstrated is not widely used in Texas.

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

(h) If a registered mobile liquid waste processing unit does not begin operation within two years of obtaining its registration, the registration shall terminate and no longer be effective.

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

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

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§330.73. Additional Standard Permit and Registration Conditions for Municipal Solid Waste Facilities.

(a) If at any time during the life of the facility the owner or operator becomes aware of any condition in the permit or registration that necessitates a change to accommodate new technology or improved methods or that makes it impractical to keep the facility in compliance, the owner or operator shall submit to the executive director requested changes to the permit or registration in accordance with §305.62 of this title (relating to Amendment) or §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications) and must be approved prior to their implementation.

(b) All drawings or other sheets prepared for requested revisions must be submitted following the format in §330.57(g) of this title (relating to Permit and Registration Applications for Municipal Solid Waste Facilities). All revised engineering and geoscientific plans, drawings, and reports shall be signed and sealed by a licensed professional engineer or geoscientist as specified in §330.57(f) of this title.

(c) A preconstruction conference shall be held prior to commencement of physical construction for a municipal solid waste (MSW) landfill facility, a vertical landfill expansion, or a lateral landfill expansion. The preconstruction conference shall not be held more than 90 days prior to the date that construction is scheduled to begin. All aspects of the permit, construction activities, and inspections shall be discussed. Additional preconstruction conferences may be held prior to the opening of a new MSW landfill unit. The executive director and owner's representatives, including the engineer, the geotechnical consultant, the contractor, and the facility manager, shall attend the preconstruction conference.

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

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

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