

Financial Assurance for Recycling, Composting, and Mulching Facilities

Summary of Adopted Rules

Adopted: October 13, 2004

Effective: November 4, 2004

Summary of New Rules in Title 30 Texas Administrative Code (30 TAC) Chapter 37 (relating to Financial Assurance), Chapter 328 (relating to Waste Minimization and Recycling), Chapter 330 (relating to Municipal Solid Waste), Chapter 332 (relating to Composting), and Chapter 335 (relating to Industrial Solid Waste and Municipal Hazardous Waste)

On October 13, 2004, the Texas Commission on Environmental Quality adopted amendments to 30 TAC Chapter 37, Subchapter J, Chapter 328, Subchapter A, Chapter 330, Subchapters A and K, Chapter 332, Subchapters C and D, and Chapter 335, Subchapter A. This rulemaking implements HB1823 which amended Texas Health & Safety Code, §361.119. The rules in these Subchapters address Financial Assurance for Recycling Facilities, including composting and mulching facilities, that store combustible materials outdoors or pose a significant risk to public health and safety. These rules apply to municipal waste and industrial non-hazardous waste facilities. Facilities exempt from these requirements are: facilities owned, operated, or affiliated with a person who has a permit to dispose of municipal solid waste; facilities owned or operated by local governments; affiliates of metal smelters; and facilities that accept no financial compensation for materials received. The executive director may approve exceptions to the financial assurance requirements. At this time, the executive director has not determined that any recycling facilities pose a significant risk to public health and safety so the rules are being applied only to facilities storing combustible materials outdoors. These rules also include changes to cross-references and other minor revisions. Changes to these Subchapters were made in the following sections:

§37.901. Applicability.

This section amends incorrect terminology and adds cross-references to establish consistency in the commission's rules.

§37.911. Definitions.

Amendment adds cross-references to establish consistency in the commission's rules.

§37.921. Financial Assurance for Closure.

Subsections (a)(1)-(4) outline financial assurance requirements not applicable to recycling facilities. Subsection (b) specifies that financial assurance mechanisms for new facilities must be submitted prior to receipt of materials while existing facilities must submit these mechanisms within 60 days of approval of closure cost estimates, within 180 days of effective date of the rule, or as otherwise approved, whichever occurs first.

§37.931. Financial Assurance Mechanism.

This section amends incorrect terminology and explains the types of financial assurance mechanisms that cannot be used to demonstrate financial assurance.

§328.5. Reporting and Recordkeeping Requirements.

Subsection (c)(1) requires affected facilities to submit cost estimates for closure based on disposition of processed and unprocessed materials and allows exceptions to these requirements by the executive director. Subsection (c)(2)(A) describes requirements for the cost estimates. Subsection (d) establishes actual financial assurance requirements for facilities that store combustible materials

outdoors and refers affected entities to Chapter 37, Subsection J, for specific financial assurance requirements. Subsection (e) describes requirements for closure, defines closure, and sets a deadline of 180 days following the most recent acceptance of material. Subsection (f)(3) adds requirements for maintaining records necessary to show proof of financial assurance.

§330.3. Applicability.

Subsection (h) outlines requirements for affected facilities to demonstrate financial assurance and refers entities to Chapter 37, Subchapter J.

§330.280. Applicability.

This section adds financial assurance requirements for municipal solid waste processing facilities that store combustible materials outdoors.

§330.282. Closure for Process Facilities.

Subsections (a) and (a)(1) require affected facilities to submit cost estimates for closure based on the cost of disposition of processed and unprocessed materials. Subsection (a)(2) describes requirements for the cost estimates. Subsection (b) establishes actual financial assurance requirements for facilities that store combustible materials outdoors and refers affected entities to Chapter 37, Subsection J, for specific financial assurance requirements. Subsection (c) describes requirements for closure, defines closure, and sets a deadline of 180 days following the most recent acceptance of material. Subsection (d) clarifies that §330.282 does not apply to process facilities that are otherwise required to have financial assurance.

§332.34. Registration Application.

Subsection (15) adds a financial assurance requirement to the application process.

§332.47. Permit Application Preparation.

Subsection (9) modifies a cross-reference for financial assurance requirements to establish consistency in the commission's rules.

§335.24. Requirements For Recyclable Materials and Nonhazardous Recyclable Materials.

Subsection (a) revised to indicate nonhazardous recyclable materials are subject to regulations under subsections (h) - (l) of which subsections (j) - (l) are new. Subsection (j) requires affected facilities to submit cost estimates for closure based on the cost of disposition of processed and unprocessed materials. Subsection (j)(1) revised to provide consistent language with §37.921. Subsection (j)(2)(A) describes requirements for the cost estimates. Subsection (k) establishes actual financial assurance requirements for facilities that store combustible materials outdoors and refers affected entities to Chapter 37, Subsection J, for specific financial assurance requirements. Subsection (l) specifies that financial assurance mechanisms for new facilities must be submitted prior to receipt of materials while existing facilities must submit these mechanisms within 60 days of approval of closure cost estimates, within 180 days of effective date of the rule, or as otherwise approved.