

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** December 30, 2021

Thru: Laurie Gharis, Chief Clerk
Toby Baker, Executive Director

From: BW Brent Wade, Director
Office of Waste

Docket No.: 2021-0243-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 332, Composting
Clarifying Composting Notice Process and Obsolete Terms
Rule Project No. 2021-006-332-WS

Background and reason(s) for the rulemaking:

Revisions are necessary to clarify and update existing notice language and requirements found in 30 Texas Administrative Code (TAC) §332.22(b).

The program area also uses this rulemaking adoption to make minor substantive and non-substantive revisions to bring the chapter more up to date with Texas Commission on Environmental Quality (TCEQ, agency, or commission) and program standards.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The rulemaking adoption will provide clarity on the information an applicant must submit for a compost Notification of Intent (NOI). Currently, §332.22(b) uses the phrase "affected landowners" regarding who an applicant lists on its compost NOI, which creates ambiguity on which landowners should be listed. This rulemaking will also incorporate applicability, fees, and reporting requirements from 30 TAC Chapter 330, Subchapter P into sections for registered and permitted facilities. Various citations and other conflicting rules between multiple chapters will also be revised and clarified. Finally, broken and obsolete links, typos, misspellings, and grammar mistakes will be corrected throughout the rules to ensure clarity, readability, and the overall effectiveness of the rules.

B.) Scope required by federal regulations or state statutes:

None.

C.) Additional staff recommendations that are not required by federal rule or state statute:

None.

Statutory authority:

The rulemaking is adopted under the authority of Texas Health and Safety Code (THSC), §361.024, which authorizes the TCEQ to adopt rules necessary to carry out its power and duties under the Texas Solid Waste Disposal Act; THSC, §361.428, which authorizes the commission to require and to issue permits for composting facilities; THSC, §361.029 which authorizes the commission to adopt rules relating to activities that involve the collection and disposal of household hazardous waste; and THSC, §361.429, which

Re: Docket No. 2021-0243-RUL

authorizes the commission to develop standards for household hazardous waste diversion programs.

Effect on the:

A.) Regulated community:

The rulemaking adoption will provide clarification regarding who receives mailed notice and other relevant updates on the applicability, fees, and reporting requirements for composting facilities.

B.) Public:

The rulemaking adoption will provide clarification regarding who should be notified for a notification tier composting activity.

C.) Agency programs:

Municipal Solid Waste Permits Section will have composting rules that are more consistent with current program practices.

Stakeholder meetings:

The commission did not hold any stakeholder meetings related to this rulemaking; however, a rule public hearing was held during the comment period.

Public comment:

The commission held a virtual public hearing on August 23, 2021. The comment period closed on August 30, 2021. The commission received comments from The Office of Public Interest Counsel (OPIC), Risa Weinberger & Associates, Inc, and Solid Waste Services for the City of Corpus Christi.

A summary of the comments and the TCEQ's responses is provided in the Response to Comments section of the rule preamble. Significant public comments are summarized as follows:

- OPIC submitted a written comment expressing concern that the definition of facility in this chapter and the notice requirements for notification tier compost facilities were not sufficiently clarified and were left vague to potential applicants.
- Risa Weinberger & Associates, Inc. submitted a written comment, and Solid Waste Services for the City of Corpus Christi submitted both a written and oral comment expressing concern that registration tier rules were very similar to notification tier rules and thus needed to be changed for consistency. Specifically, the commenters suggested removing the term "adjacent" to identify potential landowners needing to be notified to avoid continued vagueness of the notice rules and conflict with new notification tier notice rules.

Significant changes from proposal:

In response to comments:

- §332.2(18) is revised to further clarify the exact boundaries where a compost facility is located.

Re: Docket No. 2021-0243-RUL

- §332.22(b) is revised to require the applicant to submit a map depicting the approximate boundary of land the compost facility will be located on and of land bordering the facility perimeter. The applicant is also required to submit a list of landowners that have been identified using the current county tax rolls or other reliable sources at the time the application is filed. The applicant will also need to include the source of such information.
- §332.35(b)(1), (b)(2), and (d) are revised to remove the term "adjacent landowner" and replace with "landowners identified in the landowner list."

Potential controversial concerns and legislative interest:

No controversial issues have been noted.

Will this rulemaking affect any current policies or require development of new policies?

No new policies will need to be enacted due to this rulemaking adoption.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

Consequences of this rulemaking adoption not going forward would leaving 30 TAC §332.22 vague, which may leave TCEQ open to more motions to overturn already-approved notification tier facilities.

Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** July 30, 2021

***Anticipated Texas Register* adoption publication date:** January 28, 2021

Anticipated effective date: February 03, 2022

***Six-month Texas Register* filing deadline:** January 30, 2022

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Attachments:

N/A

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