

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the amendments to §330.57 and §330.59. Section 330.59 is adopted *without changes* to the proposed text as published in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8681) and will not be republished. Section 330.57 is adopted *with changes* to the proposed text and will be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

This rulemaking adds signage requirements for new municipal solid waste (MSW) permits and major amendments, and increases the distance that mailed notice is provided for certain actions relating to MSW permits and registrations. Both measures are designed to increase the likelihood that potentially affected parties will be informed that a new MSW facility or a change to an existing MSW facility is being proposed. The rule previously required identification of property ownership within 500 feet of an MSW facility in the form of a land ownership map and landowner's list in MSW permit or registration applications. When public notice is required for MSW permit or registration actions, the mailing list includes persons identified on the adjacent and potentially affected landowners list and land ownership map described in §330.59. The adopted rule changes the designated distance 500 feet to 1/4 mile for the land ownership map and landowners list distance requirements for public notice. The rulemaking also requires that applicants post signs at the facility stating that a new permit application or a major amendment application for an existing permit has been submitted, and the rule specifies requirements on sign placement and information shown on the signs.

Concurrent with this rulemaking, the commission adopts amendments to 30 TAC Chapter 305, Consolidated Permits, to revise the procedures for requesting certain major amendments to permits and to revise notice requirements for some permit and registration modifications.

SECTION BY SECTION DISCUSSION

The commission adopts amendments to §330.57(i) and §330.59(c)(3) in Subchapter B, Permit and Registration Application Procedures.

Section 330.57, Permit and Registration Applications for Municipal Solid Waste Facilities

The commission adopts amended §330.57(i) to reflect that applicability no longer applies only to internet postings.

The commission adopts amended §330.57(i)(1) to clarify that application placement on the internet is to be concurrent with submittal of the application.

The commission adopts §330.57(i)(3) to require that applicants for new permits or major amendments post signage at the facility within 30 days of the executive director's receipt of the application, and to provide requirements for information to be posted on the sign. The commission determined that potentially affected parties may be outside the area for mailed notice or may not routinely read published notices in the newspaper and could be unaware of a proposed permit action. The new requirement will better ensure that all persons have an opportunity to comment or obtain information regarding MSW activities being proposed in the community. The rule was revised from proposal to: 1) clarify applicability to new permits; 2) replace the term "facility" with "site" to better reference undeveloped locations; 3) add a requirement that the sign advise the public how they can obtain further information on participating in TCEQ permitting matters; 4) remove a requirement that the sign include the TCEQ mailing address; 5) remove a requirement that the sign provide a rule or statutory citation relating to requests for public

meetings; and 6) remain in place until the close of the final comment period.

The commission adopts §330.57(i)(4) to provide requirements for sign placement along highways or roads bordering the facility. The commission has determined that a requirement for signage at intervals no greater than 1,500 feet is an effective yet simple method of providing notice. The rule was revised from proposal to accurately reflect applicability to permitted rather than registered facilities.

The commission adopts §330.57(i)(5) to require that signs be posted in an alternative language when existing regulations require that an applicant publish notice in an alternative language.

The commission adopts §330.57(i)(6) to allow applicants to provide public notice in an alternative manner. The rule provides flexibility to the applicant and the executive director in considering other proposals when the method prescribed in rule is not practical for circumstances or conditions at the facility.

Section 330.59, Contents of Part I of the Application

The commission adopts amended §330.59(c)(3)(A) to require that permit and registration applications contain a map showing property ownership within 1/4 mile of the facility and mineral interest ownership under the facility.

The commission adopts amended §330.59(c)(3)(B) to require that permit and registration applications contain a list with the name and mailing address of property owners within 1/4 mile of the facility and mineral interest ownership under the facility.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission invited public comment regarding the REGULATORY IMPACT ANALYSIS DETERMINATION during the public comment period. No comments were received. The commission reviewed the adopted rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules are not subject to §2001.0225, because the rules do not meet the criteria for a "major environmental rule" as defined in that statute.

A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the adopted rules is to increase the likelihood that potentially affected parties will be informed that a new MSW facility or a change to an existing MSW facility is being proposed. This will be done by adding signage requirements for new MSW permits and major amendments, and by increasing the distance that mailed notice is provided for certain actions relating to MSW permits and registrations. It is not anticipated that the adopted rules will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that the adopted rules do not meet the definition of major environmental rule.

Furthermore, even if the adopted rules did meet the definition of a major environmental rule, the rules are

not subject to Texas Government Code, §2001.0225, because they do not meet any of the four applicable requirements specified in §2001.0225(a). Texas Government Code, §2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rules do not meet any of these requirements. First, there are no applicable federal standards for signage for new MSW permits or registrations. Second, the rules do not exceed an express requirement of state law in Texas Health and Safety Code (THSC), §§361.0641, 361.0665, and 361.079. Third, there is no delegation agreement that would be exceeded by the adopted rules. Fourth, the commission adopts these rules under the specific authority of THSC, §361.079. This rulemaking is also adopted under the authority of THSC, §§361.011, 361.017, and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act. Therefore, the commission does not adopt these rules solely under the commission's general powers.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these rules and performed an assessment of whether the rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rules is to increase the likelihood that potentially affected parties will be informed that a new MSW facility or a

change to an existing MSW facility is being proposed. The adopted rules will substantially advance this stated purpose by adding signage requirements for new MSW permits and major amendments, and by increasing the distance that mailed notice is provided for certain actions relating to MSW permits and registrations.

Promulgation and enforcement of these rules would be neither a statutory nor a constitutional taking of private real property because the rules do not affect real property. In particular, there are no burdens imposed on private real property. In addition, the adopted rules do not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, these adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the Coastal Management Program, and, therefore, required that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received on the coastal management program.

PUBLIC COMMENT

The commission held a public hearing in Austin on January 8, 2008. The comment period closed on January 15, 2008, and subsequently was extended to February 22, 2008, in response to requests from State Representative Richard Hardcastle and State Representative Larry Phillips.

Comments were received from McGinnis, Lochridge & Kilgore, L.L.P on behalf of Allied Waste Industries (Allied), Biggs & Mathews Environmental (B&M), Harris County Public Health & Environmental Services (HCPHES), Hutto Citizens Group (HCG), IESI TX Corporation (IESI), Indian Creek Homeowners Association of Carrollton (ICHA), Lowerre, Frederick, Perales and Allmon (LFPA), Malcolm Pirnie, Inc., San Antonio Office (MPI), National Solid Wastes Management Association (NSWMA), TCEQ Office of Public Interest Council (OPIC), Republic Waste Services of Texas, Ltd. (RWS), Russell & Rodriguez on behalf of Texoma Area Solid Waste Authority (TASWA), North Texas Municipal Water District (NTMWD), City of Arlington (COA), City of Corpus Christi (COCC), City of Dumas (COD), and City of San Angelo (SOSA), Lowerre & Frederick Attorneys at Law and Texas Campaign for the Environment (LF/TCE), Texas Disposal Systems (TDS), Texas Landfill Management (TLM), Lone Star Chapter of the Solid Waste Association of North America (TxSWANA), Waste Management of Texas, Inc. (WMTX), and seven individuals. Many commenters supported the rulemaking, however with suggested changes. Specific comments are addressed below.

RESPONSE TO COMMENTS

Term limits

IESI suggested a typographic change to the section on Statutory Authority for Subchapter B. Five individuals stated that MSW permits should have term limits to allow an opportunity for regular public review.

The commission appreciates the comment but could not identify the typographic error and did not make the change. The commission does not agree that a proposal for term limits is within the scope of this rulemaking and the rule was not amended in response to this comment.

Signage for new permits and major amendments

Allied, IESI, and TxSWANA commented that the rule should reference "new" permits. Allied, IESI, NSWMA, RWS, TxSWANA, and WMTX commented that the section should be amended to explicitly state that the sign is for "informational purposes only" so as not to create new jurisdictional challenges. Allied and WMTX stated that the rule should be amended to state that signs must "substantially meet" the requirements set forth in subparagraphs (A) - (H), consistent with other commission rules. Allied also suggested that the term "facility" be revised to "site."

The commission agrees that the rule should reference "new" permits and that the purpose of the signage requirement is to provide information to the public in an effective manner, and the intent not to create additional legal issues. The commission also agrees that "site" is more appropriate to the future location of a landfill and has amended §330.57(i)(3) in response to these comments. The commission has amended the rule to reduce the required information as discussed below and

therefore does not agree it is necessary to make provision for "substantial compliance" with the signage requirements and has not amended the rule in response to this comment.

Allied and OPIC stated that subparagraph (H) should be deleted and that language should be provided in subparagraph (C) advising the public of the ability to comment or request a public meeting. HCPHES and LF/TCE stated that the signage requirements should include the internet address for viewing the application. LF/TCE commented that the sign should also include rule citations for the ability to request a contested case hearing, or a web address in lieu of rule or statutory citations to provide a link to applicable statutes, rules, and other related information. OPIC commented that the Central Office address in subparagraph (D) should include the Office of the Chief Clerk (OCC) mail code number. TASWA, NTMWD, COA, COCC, COD, SOSA, and RWS commented that the information required should be simplified. TASWA, NTMWD, COA, COCC, COD, and SOSA stated that the prescribed 4-foot by 4-foot sign is inadequate for the required information and that an accurate sign size should be prescribed. WMTX noted a typographical error in §330.57(i)(3)(H).

The commission agrees that the suggested internet addresses, rule citations, and the OCC mail code would be useful information but also agrees an excessive amount of information was required in the proposed rule and has not added this information in response to comment. The commission has amended subparagraph (C) to advise the public on how they can obtain information on participating in TCEQ permitting matters, has reduced the information required by subparagraph (D), and has deleted §330.57(i)(3)(H) in response to comments. The reduced information should allow the 4-foot by 4-foot sign to be adequate and no change was made to the sign size in response to comment.

Allied commented that the rule should be amended to clarify that signs are to remain in place until a final decision by the commission. WMTX commented that §330.57(i)(3)(G) should be amended to clarify that signs are to remain in place until 30 days after the last publication of the Notice of Application and Preliminary Decision. WMTX stated that an owner/operator should not be penalized if reasonable efforts are taken to maintain the signs in a readable condition as required in subparagraph (G). One individual stated that the rule should accommodate potential damage to the sign when signage is required for lengthy periods, or limit the time required for signage.

The commission agrees that signs should remain in place until the close of the final comment period and has revised §330.57(i)(3)(G) in response to this comment. The commission acknowledges that signs may be required to remain in place for long periods and agrees that an owner/operator should not be penalized if reasonable efforts are taken to maintain the signs. The commission has reduced the information required on the signs to provide for compliance through a reasonable level of care and maintenance. The commission does not agree that other accommodation or time limits should be included in the rule and has not amended the rule in response to this comment.

Sign spacing

Allied and RWS stated that §330.57(i)(4) should be revised to require a single sign only at the facility's main entrance. TASWA, NTMWD, COA, COCC, COD, and SOSA commented the 1,500-foot spacing is excessive, penalizes sites with large buffers, and one sign along each road is adequate. HCPHES stated that the reference to "registered facility" should be revised to reference facilities that are permitted.

TxSWANA commented that signage in an alternative language could result in an excessive number of

signs and suggested that only every other sign posted must be in the alternative language.

The commission appreciates the comment regarding the reference to registered facilities and has amended the rule to refer to permitted facilities. The commission does not agree that providing the public with a single sign at the site entrance or along each road is adequate to effectively convey the information as intended. The rule provides for a maximum of three signs along each road which is consistent with TCEQ Air Permits program requirements and given the reduced amount of information being required on each sign, the commission does not agree this is unreasonable even when signage in an alternative language is required. The commission has not amended the rule in response to these comments.

Signage Variance

TxSWANA stated that that 30-day posting requirement should be amended to accommodate the time necessary for the executive director to consider and authorize a variance request as allowed in §330.57(i)(6).

The commission does not agree that an additional time period is necessary and has not amended the rule in response to this comment. The 30-day period begins once an application has been submitted, which coincides with the administrative review of the application. The administrative review does not include consideration of variances for signage. An application for a new permit or a major amendment requires an extensive period of preparation and includes coordination with other agencies prior to submitting the application. If a variance from the signage requirement is to be requested, coordination with the TCEQ executive director on the variance should be accomplished

during this period.

1/4 mile public notice requirement

Allied, IESI, NSWMA, and TxSWANA stated the 1/4-mile notice requirement resulting from changes to §330.59(c)(3) is overly burdensome for minor changes to a facility and that the 500-foot notice should be retained for modifications which require public notice. Allied also commented that if the 1/4-mile notice is retained, the rule should allow for "substantial compliance" with the requirements. B&M stated that expanding notice to 1/4 mile will result in greater confusion for the regulated community and the public, will be more expensive and time consuming. Five individuals stated that the proposed expansion to 1/4 mile for public notice is inadequate. ICHA, OPIC, and LF/TCE stated that the landowner's map and list and the accompanying notice should be expanded from 1/4 mile to include landowners within one mile of the facility. LF/TCE noted that persons could be affected beyond one mile from the facility and that distance for notice could be made dependent on the size, height, and type of facility. LFPA commented the landowners list and map should include all real property owners with 1/2 mile of the permit boundary for a new permit or amendment for a Type I landfill and that other changes requiring notice should be provided to property owners within 500 feet of the facility boundary or to landowners up to 1/2 mile if determined appropriate by the ED upon initial review of the application. TASWA, NTMWD, COA, COCC, COD, and SOSA commented the Section by Section discussion incorrectly states the landowners map should include the mineral interest ownership within 1/4 mile of the facility. RWS commented that the proposed expansion of notice requirements from 500 feet to 1/4 mile will be unnecessarily burdensome for both permittees and the TCEQ when facilities are located in urban or suburban areas, that parties most concerned are adjacent property owners, and that a 500-foot public notice requirement should be retained. TxSWANA proposed that the notice requirement for smaller facilities such as transfer

stations be limited to 750 feet, and suggested rule language to allow "substantial compliance" with requirements relating to identification of landowner and mineral interest ownership. WMTX commented that in heavily populated areas notification requirements will be unreasonably burdensome and the rule should be amended to retain the 500-foot notice requirement when facilities are located in counties whose population is greater than three million people.

The commission acknowledges that the rule is a significant change in the notice requirement and that extending public notice from 500 to 1,320 feet will result in a more burdensome requirement in heavily populated areas. However, the commission does not agree that the 1/4 mile mailed notice is excessive. The commission prefers to adopt a uniform standard for providing notice and does not agree that notice should be based on the population, type of authorization, the facility size and height, or the executive director's determination upon application review. The commission appreciates the comment regarding the SECTION BY SECTION discussion regarding mineral interest ownership and has revised the discussion to reflect the rule. The expanded notice must represent a balance of interests and consequently the commission does not agree that the notice should be greater than 1/4 mile. The 1/4-mile notice requirement will greatly increase the likelihood that potentially affected parties will be informed that a new MSW facility or a change to an existing MSW facility is being proposed, and the community is entitled to be made aware of any potential impact resulting from changes in MSW activities. The commission acknowledges consideration will be given for "substantial compliance" with public notice requirements, but the commission does not agree it is appropriate to place this term in the rule. The commission has not amended the rule in response to these comments.

SUBCHAPTER B: PERMIT AND REGISTRATION APPLICATION PROCEDURES

§330.57, §330.59

STATUTORY AUTHORITY

The amended sections are proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; Texas Health and Safety Code (THSC), §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction; THSC, §361.024, which provides the commission with rulemaking authority; and THSC, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste.

The proposed amended sections implement THSC, §361.002, Policy and Findings; THSC, §361.011, Commission's Jurisdiction, Municipal Solid Waste; THSC, §361.024, Rules and Standards and THSC, §361.061, Permits. The proposed amended sections also implement TWC, §5.103, Rules.

§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" at 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.

§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.