

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §330.601, relating to Purpose and Applicability; the repeal of §§330.801-330.818, 330.820-330.836, 330.838, and 330.840-330.889; and new §§330.801-330.821 in Subchapter R, concerning Management of Used or Scrap Tires. New §§330.802-330.820 are adopted with changes to the proposed text published in the January 2, 1998 issue of the *Texas Register* (23 TexReg 64). New §330.801 and §330.821 and the repealed sections are adopted without changes and will not be republished.

#### EXPLANATION OF ADOPTED RULES

The purposes of the adopted amendments, repeals and new sections are to address the sunset provisions of Texas Health and Safety Code Chapter 361, Subchapter P, address the requirements of existing statutory language which does not contain a sunset provision, and streamline certain requirements of the previous rules. In most areas of the adopted new sections, rule language from the previously existing sections has been streamlined, clarified, and/or reformatted. In other areas, new requirements are adopted.

Chapter 361, Subchapter P of the Texas Health and Safety Code contained a provision for the Waste Tire Recycling Fund (WTRF) reimbursement program to sunset December 31, 1997. Subchapter P established the WTRF and the reimbursement program for processors to collect, shred, and recycle used or scrap tires. Under the sunset provisions, all references to the reimbursement program, including end-use requirements, and the WTRF have been deleted. The adopted rules no longer contain the 90-day limit for generators to remove whole tires from storage. Generators who store more than

500 used or scrap tires are still required to register with the commission. Other adopted changes concerning generator requirements include removal of the requirement to accept used tires, removal of the restriction from accepting money for tires, removal of the requirement to remove tires from rims, removal of the differentiation between large and regular volume generators, and removal of the restriction that generators can only store their own tires. For transporters, the registration fee is removed, the exemption from registration is expanded to include generators hauling their own tires and to include governmental transport vehicles, and the prohibition from charging a fee to haul tires is deleted. For storage facilities, an exemption from registration as a storage site is adopted for generators who process and/or store 500 or fewer used or scrap tires on the ground or 2,000 or fewer in enclosed containers; the registration and design requirements for a scrap tire storage site have been reorganized but are essentially unchanged from the current rules; requirements are added for land reclamation projects using tires (LRPUT); the training requirements for employees transporting or handling tires and for transporters who deliver tires to the storage facility have been removed; and notice to local governments is required. Concerning scrap tire facilities, the adoption includes processing, recycling, and energy recovery facilities under this designation; requires a scrap tire storage site registration for certain processors and for facilities storing more than a 30-day supply of tires; reduces the frequency of reporting to an annual report; and removes the \$500 registration fee. Concerning the Special Authorization Priority Enforcement List (SAPEL) and the Priority Enforcement List (PEL) program, the adoption has removed the 2,500,000 tire “trigger” for issuing contracts to procure cleanups for the removal of tires from PEL sites, and has removed the previous rule language concerning assignment of PEL sites on an individual basis to waste tire facilities, in favor of a competitively-bid contract process.

Concerning closure costs estimates and financial assurance, the per-tire formula is deleted, the written estimate of closure costs is to be calculated based on actual estimates for third-party closure, and financial assurance sections are being adopted under Chapter 37 of this title (relating to Financial Assurance).

Also due to the sunset provisions of Texas Health and Safety Code Chapter 361, Subchapter P, the following previously existing sections are repealed: §330.804, concerning the use of tire shreds in landfills; §§330.820-330.829, concerning WTRF allocation method, model, notification, fiscal audits, overpayment from the WTRF, and WTRF program reviews; §330.838, concerning requirements for a Type VIII-W.T. waste tire storage facility; §330.842, concerning waste tire facility classification and operational requirements such as shredding; §330.848, concerning eligibility for the WTRF program; §330.850, concerning requirements for waste tire recycling facilities; §330.853 and §330.854, concerning requirements and funding for waste tire energy recovery facilities; §330.856 and §330.857, concerning requirements for waste tire transfer stations and collection centers; §330.864, concerning ranking of illegal waste tire sites; §330.871 and §330.872, concerning the WTRF; and §§330.874-330.884, concerning WTRF grants, confidentiality, WTRF reimbursement and transfer of funds, special authorization tires, community service, executive director's regional site directive and protests thereof, formal petitions and hearings, and end use credit system.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of the Texas Government Code §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the act, and it does not meet any of the four applicability requirements listed in §2001.0225(a). No comments on the proposed regulatory impact analysis were received.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated §2007.043. The following is a summary of that assessment. The specific purpose of the rules is to adopt a set of regulations for the sound and proper management of used or scrap tires or tire pieces that are classified as municipal solid waste. The rules will substantially advance this specific purpose by adopting a set of standards controlling the storage, transportation, treatment, and disposal of used tires, scrap tires, and tire pieces. Promulgation and enforcement of these rules will burden private real property which is the subject of the rules to the extent that restrictions are placed on private property where used or scrap tires are stored, and restrictions are placed on the use of used or scrap tires in land reclamation projects. However, this action is taken to prevent a public or private nuisance. Without the regulatory controls and management options provided in these rules, there would be a proliferation of illegal tire dumps on both private and public lands. These dumps would not only be unsightly, but would also present public health and safety hazards primarily due to vectors and the risk of fires. Furthermore, there is a good faith belief that this action

is necessary to prevent a grave and immediate threat to life or property. Without the regulatory controls and management options provided in these rules, there would be a proliferation of illegal tire dumps on both private and public lands. These dumps would present a serious threat of fires which would endanger life and property. In addition, these dumps would lead to serious vector problems which would endanger life in areas where disease-carrying vermin and/or mosquitoes are present alongside human and animal populations. Some portion of the rules implement the existing state law in 361.112, and some portion of the rules replace existing rules that are more stringent.

#### COASTAL MANAGEMENT PROGRAM

The commission has reviewed this rulemaking and found that the rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program (CMP), or will affect an action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and therefore requires that applicable goals and policies of the CMP be considered during the rulemaking process.

The commission has prepared a consistency determination for the adopted rules pursuant to 31 TAC §505.22 and has found the rulemaking to be consistent with the applicable CMP goals and policies.

The following is a summary of that determination. The CMP goal applicable to the rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the rules include the administrative policies and the

policies for specific activities related to construction and operation of solid waste treatment, storage, and disposal facilities.

Promulgation and enforcement of these rules is consistent with the applicable CMP goals and policies because the rules will encourage safe and appropriate storage, transportation, treatment, and disposal of used tires, scrap tires, and tire pieces that are classified as municipal solid wastes, which will result in an overall environmental benefit across the state, including in coastal areas. In addition, the rules do not violate any applicable provisions of the CMP's stated goals and policies. No comments were received on the proposed CMP consistency determination.

#### PUBLIC HEARING AND COMMENTS

A public hearing was held on January 27, 1998 in Austin, Texas. There were oral and written comments received from six commenters at the hearing. Oral comments were provided by Anne Day, Tom Collins, and Beatrice Link, representing the City of Houston (City of Houston); R.P. Jones, representing the Harris County Health Department; Danny Ibarra, representing Safe Tire Disposal Corporation of Texas; and Kay Knapp, representing Texas Tire Dealers Association. In addition, there were written comments received subsequent to the public hearing prior to the filing deadline of 5:00 p.m. February 17, 1998. Twenty-four written comments were received from: Aluminum Company of America (Alcoa), Blackburn & Carter, Concerned Citizens for Community Development, Edgebrook Neighborhood Coalition, City of El Paso Department of Solid Waste Management (City of El Paso), Environmental Recovery & Recycling Inc. (ERRI), Gulf Freeway Oaks Civic Club, Holnam Texas

L.P. (HTLP), House, Kingsmill, Riess & Seabolt, L.L.C., City of Houston Mayor's Office (City of Houston), Lubbock Waste Tire Recycling, North Texas Cement Company (NTCC), State Representative Dora Olivo, Safe Tire Disposal Corp. of Texas, Southeast Neighborhood Coalition, TechniServ Inc., Texas Automobile Dealers Association (TADA), Texas Crumb Industries, L.L.C. (TCI), Texas Mosquito Control Association, and five individuals.

An individual commented that an unzoned area and neighborhoods adjacent to commercial use are not protected from nuisances. The Edgebrook Neighborhood Coalition commented that, if the new commission rules are adopted, the quality of life in neighborhoods will be negatively impacted, and since the City of Houston lacks zoning and deed restrictions, the entire city will suffer. The Gulf Freeway Oaks Civic Club stated that they did not agree with the proposed rules, that the proposed rules would be a disaster for the neighborhood, and that they would bring the value of the homes down. The City of Houston expressed concerns that storage facilities can be located anywhere in the City of Houston, and concerns over the lack of distance and screening requirements.

**While the commission appreciates these commenters' concerns, it should be noted that concerns over zoning and deed restrictions are more appropriately addressed on a local basis by local governments. It should also be noted that a primary purpose of the adopted rules is to prevent nuisances and uncontrolled storage of used or scrap tires. Promulgation and enforcement of these rules will encourage safe and appropriate storage, transportation, treatment, and disposal of used**

**tires, scrap tires, and tire pieces that are classified as municipal solid wastes, which will result in an overall environmental benefit across the state, including in unzoned areas.**

The City of Houston recommended that the rules contain a provision acknowledging the authority of local governments to regulate entities not regulated under the state rules and to impose more stringent requirements. An individual commented that a facility with a registration or permit must be operated in compliance with local ordinances that may be stronger than the commission's rules. The City of El Paso recommended that language be added that would enable municipalities to draft local ordinances to address the problems of proper waste tire disposal and specify that municipalities may enact more stringent regulations that are consistent with these rules.

**The commission agrees with these comments and acknowledges that local municipalities have the authority to pass regulations which are equal to or more stringent than the regulations in this subchapter. The commission has added language in §330.802(a) which states that local governments have the authority to pass local ordinances regarding the management of used or scrap tires within the boundaries of the local government and requires all persons or facilities regulated by the subchapter to comply with all applicable local ordinances that are equally or more stringent than the regulations in this subchapter.**

Concerning §330.803, the City of Houston requested clarification as to what constitutes a facility or site.

**The commission agrees that a definition of facility is appropriate and has added the definition of facility as all contiguous land and structures, other appurtenances, and improvements on the land used for the storage or processing of scrap tires.**

Concerning §330.803, the TADA identified a typographical error in referring to generators as "registered."

**The commission agrees with this comment. Not all generators are required to register under these rules. The word "registered" has been deleted for purposes of clarification.**

Concerning §330.803, ERRI, Lubbock Waste Tire Recycling, and TCI recommended that tire baler be included in the definition of tire processor to ensure that baling operations are subject to the regulations, provisions, and rules required for tire processing facilities. The commenters also requested that these facilities be specifically required to include legitimate end uses for their baled products and provide financial assurance for the future liability of site cleanups from the eventual decomposition of the binding material.

**In response to this comment, the commission has included tire baling in the definition of tire processor. When tires are baled, they are compressed and baled with wire strands, reducing the volume of the tires. Processing is defined as “the extraction of materials from or the transfer, volume reduction, conversion to energy or separation and preparation of solid waste for reuse or**

**disposal,” and by definition, baling is processing. Therefore, tire baling should be included in the definition of tire processor and baling operations should be subject to the same requirements as tire processing facilities. Under this subchapter, tire baling facilities will be required to register as scrap tire facilities and will be subject to the same storage site and financial assurance requirements as tire processors.**

Concerning §330.803, the definition of land reclamation, Blackburn & Carter recommended that long term beneficial use be defined.

**In response to this comment, rather than attempting to define the general term “long term beneficial use” the commission has instead deleted the term “long term beneficial use” and had added language to clarify the definition of land reclamation. The commission believes that the purpose of a land reclamation project is to restore the land to its approximate natural grade and to prepare or reclaim the land for re-use.**

Concerning §330.803, HTLP suggested that the commission remove a comma and add the word "to" to the definition of tire processor to clarify that energy recovery facilities are defined as scrap tire facilities and not defined as tire processors. From the wording and punctuation of the definition, it is difficult to ascertain whether the definition of tire processor includes an energy recovery facility or whether the reference to energy recovery facilities is only as the recipient of a delivery of scrap tires by a tire processor.

**The commission agrees with this comment and has made the proposed changes to the definition of tire processor for purposes of clarification. In the definition of tire processor, energy recovery facilities are referred to as recipients of scrap tires from tire processors.**

Concerning §330.803, the City of Houston recommended that "enclosed and lockable container" be defined as a container, including, but not limited to a building, trailer, or dumpster that is water impervious and lockable. The commenter expressed concern about the ability of persons to store tires in a lockable chain link fence with a roof or in an old dumpster that would allow water accumulation and access by rats and other vectors.

**The commission disagrees with this comment and agrees in part. The commission believes that it is necessary to allow generators to accumulate tires in trailers that can be easily transported offsite. It is a common practice for transporters to leave a trailer for generators who accumulate large volumes of scrap tires in a short amount of time. The commission has added the word "portable" in recognition of this practice. In addition, the commission believes that dumpsters, if enclosed and lockable, typically meet the definition of trailer, but the commission does not believe that it is necessary to require that temporary generator storage be water impervious because of the variety of climate conditions and rainfall across the state. However, the commission does recognize the authority and flexibility of local governments to address local conditions and impacts, such as weather.**

Concerning §330.803, an individual recommended adding a definition of "nuisance" to include any scrap tire facility located within 1,500 feet of any single family residential use.

**The commission disagrees with this comment and has made no change to the rule. The term nuisance is defined in 30 TAC §330.2 as "Municipal solid waste that is stored, processed, or disposed of in a manner that causes the pollution of the surrounding land, the contamination of groundwater or surface water, the breeding of insects or rodents, or the creation of odors adverse to human health, safety, or welfare." The commission believes that a scrap tire facility, if operated in accordance with these rules, will not result in nuisance conditions. The rules require that the owner or operator of a scrap tire facility operate vehicles and equipment to prevent nuisances or disturbances to adjacent landowners and that land reclamation projects be constructed so as not to result in a public nuisance. In addition, the commission notes that city and county governments may adopt ordinances and zoning restrictions to address nuisance concerns.**

Concerning §330.803, Blackburn & Carter commented that debris and rubble are not suitable for fill material.

**The commission agrees with this comment. Debris and rubble are vague and undefined terms and could include non-inert materials which could decay and be unsuitable for use as fill material.**

**The definition of LRPOT has been changed to limit the allowable mixture material to only inert fill materials as defined in 30 TAC §330.2.**

Concerning §330.803, the definition of scrap tire storage site, HTLP commented that an energy recovery facility that stores less than a 30-calendar day supply of used or scrap tires or tire pieces should not be included as part of the definition.

**The commission agrees with this comment. The definition has been revised to exclude a scrap tire facility that stores less than a 30-calendar day supply of used or scrap tires or tire pieces. The commission believes that it is unnecessary to require a registered energy recovery facility to also register as a scrap tire storage site because such a facility will be storing less than a 30-day supply of scrap tires and is already required to maintain records and prepare an annual summary of scrap tire use.**

Concerning §330.803, the City of El Paso recommended clarification of the definition of “good used tire” to reference the amount of tread left on a good used tire by specific measurement.

**The commission does not agree with this comment. In §330.806(c)(3), the commission requires retailers and wholesalers who sell good used tires as a commodity to sort, mark, classify, and arrange the tires in an organized manner for sale to the consumer. The commission believes that**

**this method for classifying tires is sufficient and that specific tread measurements are unnecessary.**

Concerning §330.803, the City of El Paso recommended removing a loophole in the definition of scrap tire that defines a tire that can no longer be used for its intended purpose, but can still be used for "another purpose," as not a scrap tire. The definition does not define what constitutes a legitimate "other purpose."

**The commission agrees with this comment. Used tires that can no longer be used for their original purpose are scrap tires, and are regulated under this chapter. In response to this comment, the commission has simplified the definition of scrap tire by removing the reference to other purposes for scrap tires.**

Concerning §330.804, the Harris County Health Department and the Texas Mosquito Control Association recommended that vector monitoring and control provisions be included in all rules and regulations concerning generation, storage, transportation, and disposal of scrap tires.

**The commission has made no change in response to this comment. The commission believes that the vector control measures required throughout these rules are sufficient to protect human health and the environment. For example, in §330.806(c)(4) the commission requires that generators monitor and use preventive measures for vectors at least once every two weeks. Further, in**

**§330.810(b)(10)(E)(v) and §330.811(e), vector control procedures are required for any type of vector that may be found at a scrap tire storage site. Also, in §330.813(d)(2), vector control measures are required for scrap tire facilities. Where municipalities believe that these general requirements are not adequate for specific areas of the state, local governments may adopt ordinances to address specific local concerns about tire management.**

Concerning §330.804, The Gulf Freeway Oaks Civic Club commented that the siting of scrap tire facilities and storage sites will bring down the value of homes in neighborhoods near such sites.

**The commission has made no change in response to this specific comment. The commission believes that it is appropriate for local governments with zoning authority to address local facility siting issues that are not considered in the general statewide regulation of facilities. In addition, the commission does not consider property values when approving facility registrations.**

Concerning §330.804(d), the City of Houston suggested that the rules be clarified so that vehicles used by local governments to collect and transport abandoned tires to authorized facilities or to collect municipal solid waste are not subject to the general transporter requirements.

**The commission agrees with this comment and has revised the section to exempt certain municipal vehicles listed in §330.807(b)(4) and (5) from the general transporter requirements. The commission believes that local governments should be exempt from the general transporter**

**requirements in this case because improper disposal by local governments is not a risk. This exemption will remove the burden of registration and other requirements from government subdivisions by exempting municipal solid waste or commercial route collection trucks which handle incidental loads of used or scrap tires and by exempting transport vehicles owned and operated by governmental entities used to transport used or scrap tires.**

Concerning §330.804, the Edgebrook Neighborhood Coalition commented that the quality of life in neighborhoods will be negatively impacted, and because Houston has no zoning and deed restrictions there will be nothing to prevent anyone from collecting and storing tires.

**The commission has made no change in response to this comment. The commission believes that storage sites and LRPUs, if operated in accordance with these rules, will not endanger human health or the environment. In addition, city and county governments may adopt ordinances to address specific concerns about local tire management and zoning issues.**

Concerning §330.804(b), the City of Houston suggested that the commission clarify at what point scrap tires may be commingled with other solid waste. Adding the word "before" to the section will clarify that split, quartered or shredded tires may be intermixed with other solid waste only during disposal at permitted municipal solid waste (MSW) landfills.

**The commission agrees with this comment. The proposed change has been made to clarify that before disposal, scrap tires may not be mixed with any other type of scrap material or solid waste, except for incidental scrap tires picked up in enclosed municipal solid waste collection vehicles.**

Concerning §330.805, Alcoa, the City of El Paso, the City of Houston, NTCC, Safe Tire Disposal Corp. of Texas, Southeast Neighborhood Association, and Techniserv Inc., suggested that the commission continue to register generators.

**The commission does not agree with this comment. Given that there is no longer a reimbursement program, the commission believes that there is no additional protection of human health and the environment gained from generator registration and that is it appropriate to remove this unnecessary regulatory requirement. In addition, the commission believes that the requirements for generators to retain originals of scrap tire management documentation for a period of three years and to have these records available to the executive director upon request, in addition to the reporting requirements for transporters, are adequate for the state to regulate scrap tire management and disposal.**

Concerning §330.805, the City of El Paso and the City of Houston recommended that municipalities be able to provide input during the registration process before approval. The City of Houston suggested that applicants be required to mail a copy of the application to the local governments and that the

commission withhold registration until 45 days after the local governments receive the application, to allow local governments time to submit comments.

**The commission agrees that local governments should be given an opportunity to provide input during the storage site registration process. In response to this comment, the commission has added §330.811(b)(2) and (3) and §330.816(a)(9) and (10) requiring that notice be sent to local governments in the LRPUT and storage site approval requirements and has added a public comment section. Rather than providing a 45-day comment period, however, the commission believes that 30 days is a sufficient period of time to allow local governments to comment on an application and is consistent with other public notice and comment provisions.**

Concerning §330.805(6)(A), the City of Houston suggested that causes for denial of registration include failure to comply with local ordinances, failure to obtain fire marshal approval, and failure to meet any other requirements of this subsection.

**The commission agrees with this comment. The application requirements for scrap tire storage sites require an applicant to submit a statement that the applicant will operate a site in compliance with local and state regulations. In addition, the commission has added failure to obtain fire marshal approval as a ground for denial of a registration. The commission believes that these changes will ensure that storage sites are designed and operated in compliance with local**

**ordinances and with approval of the local fire marshal, which will, in turn, ensure more local control of local health and safety concerns.**

Concerning §330.806, the Texas Tire Dealers Association expressed support for generator manifesting requirements.

**The commission agrees that a tracking document is appropriate and has added §330.806(c) which requires that each generator use manifests, work orders, invoices, or other records to document the removal and management of all scrap tires generated on-site.**

Concerning §330.806(a), the TADA opposes the requirement that generators be responsible for ensuring that scrap tires are transported to an authorized facility because there is no relief for a generator whose tires never reach an authorized facility.

**The commission disagrees with this comment and has made no change in response to this comment. The commission believes it is important that generators have some responsibility for proper tire disposal. The manifest system protects the generator by immediately providing the generator with a record of the tires removed from the generator's site and by providing a record of the final disposal of the tires within 60 days. If a generator does not receive a copy of the manifest within three months after the off-site transportation of the used or scrap tires or tire**

**pieces indicating that the tires reached an authorized storage or disposal facility, the generator should notify the appropriate commission regional office as required in §330.808(e).**

Concerning §330.806(b), an individual recommended prohibiting storage of any tire on the ground and recommended requiring more than 18 inches of open clear space between the earth and any tire or tire parts.

**The commission disagrees with this comment and has made no change to the rule. The commission does not believe that prohibiting storage of tires on the ground or requiring more than 18 inches of open clear space between the ground and tires is a necessary statewide storage requirement for purposes of environmental protection or the protection of human health. In addition, the rules require vector monitoring and control procedures. The commission does acknowledge the authority of local governments to address specific local zoning, health and safety concerns through local ordinances.**

Concerning §330.806(b), the TADA supported the 500/2000 accumulation limits and suggested that there be a 90-day time limit placed on generator storage, and that sites should be registered as storage sites if storing tires for more than 90 days.

**The commission agrees in part with this comment. The commission has added generator registration requirements to §330.806 because §361.112 of the Texas Health and Safety Code**

**requires any person storing more than 500 used or scrap tires for any period of time to register with the commission. However, the commission is exempting generators from registering as storage sites because generators typically store more than 500 used or scrap tires for a temporary period of time, while waiting for a transporter to remove the tires. The commission recognizes that this temporary storage period will vary depending on the size of the generator and the volume of tires collected. Therefore, the commission declines to require generators who store used or scrap tires for more than 90 days to register as storage sites.**

Concerning §330.806(b), the City of El Paso suggested that tire generators who store 500 tires on the ground be required to screen these tires from public view and keep the tires covered. The City of Houston also recommended that tires stored on the ground be covered by a water repellent cover.

**The commission disagrees with this comment and has made no change in response to this comment. The commission does not believe that screening tires from public view or covering tires is an appropriate requirement to impose statewide. Some areas of the state do not experience the same problems with water accumulation and vector breeding in tires as other areas, such as Houston. The commission again notes that city and county governments may adopt ordinances to address specific concerns about local tire management.**

Concerning §330.806(b)(1), the City of El Paso and the City of Houston requested clarification of the total number of tires allowed under generator storage.

**The commission agrees that clarification is needed. Section 330.806(c)(1) has been revised to limit generator storage to the total of 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in trailers. Used or scrap tires in excess of 500 must be stored in trailers.**

Concerning §330.807, NTCC and Techniserv Inc. recommended a continuation of transporter registration fees to fund registration activities and to prevent "fly-by-nighters" from registering as transporters.

**The commission disagrees with this comment and has made no change in response to this comment. The commission has no authority under Texas Health and Safety Code §361.112 to collect fees for registration and hauling activities. In addition, the commission believes that the annual reporting requirements and the grounds for revoking a transporter registration are adequate to qualify transporters. A transporter registration may be revoked for: failure to maintain complete and accurate records required under this chapter; failure to maintain vehicles in safe working order as evidenced by at least two citations per vehicle from the Texas Department of Public Safety or local traffic law enforcement agencies; altering any record maintained or received by the registrant; delivery of used or scrap tires or tire pieces to a facility not registered to handle the tires, unless the facility receiving the tires is exempt from registration; failure to comply with any rule or order issued by the commission pursuant to the requirements of**

**this chapter; failure to submit any applicable annual report; dumping of used or scrap tires or tire pieces illegally; collection, storage, transportation or processing of used or scrap tires or tire pieces without registration, as required in this section; or failure to notify the executive director of any change in registration information as required.**

Concerning §330.807(b)(5), the City of Houston recommended that the transporter exemptions include trucks the city uses when collecting abandoned tires and transporting them to a central collection site for later transport to an authorized facility.

**The commission agrees with this comment. The commission believes that local governments should be exempt from transporter requirements in this case because improper disposal by local governments is not a risk. The commission has included a provision that exempts transport vehicles used by government entities to transport tires to a collection facility for temporary storage before transport to an authorized facility.**

Concerning §330.807(c)(2), the TADA suggested that transporters, instead of tire facilities, return manifests to generators.

**The commission disagrees with this comment and has made no change in response to this comment. The manifest system is designed to track the tires from generation to final disposal. Transporters are responsible for completing the transporter portion of the document and**

**retaining one of the five copies. There are instances where more than one transporter collects and delivers tires to an end user, and therefore, it is more appropriate for the final accepting facility to return the manifest to the generator.**

Concerning §330.807(c)(2), the TADA suggested that transporters return manifests in 30 days rather than 60 days.

**The commission disagrees with this comment and has made no change in response to this comment. There are instances when a tire may be transported by more than one transporter and may not reach a final destination until 60 days after collection.**

Concerning §330.808(b), the TADA suggested that the manifest include the license plate number or driver's license number of the vehicle and individual collecting tires from generators.

**The commission agrees with this comment and has specified the information required on the manifest to include the transporter's drivers license number. Clearly identifying the driver of the transport vehicle is important to prevent and enforce against illegal dumping. The commission believes that the driver's license number is a better source to identify the actual driver than the license plate number, which would only identify the company.**

Concerning §330.808(c), the City of El Paso recommended that generators be required to track all waste tires. The proposed rules track tires transported by registered transporters. If a tire generator transports his own tires, then the manifest does not track those tires.

**The commission agrees with this comment and recognizes that there may be situations when a tire generator transports the generator's own tires. In such a situation, although registration as a transporter is not required, the tires should be properly manifested. Section 330.806(b) has been added, requiring each generator to use manifests, work orders, invoices, or other records to document the removal and management of all scrap tires generated on-site.**

Concerning §330.809, an individual suggested prohibiting the storage of more than four tires at any location adjacent to a facility within 1,500 feet of any single family residence.

**The commission disagrees with this comment and has made no change in response to this comment. The commission believes that a scrap tire facility, if operated in accordance with these rules, will not result in nuisance conditions to single family residences. In addition, the commission notes that city and county governments may adopt ordinances to address specific concerns about zoning and local tire management.**

Concerning §330.809(b)(4), the City of Houston suggested deleting the words "necessary and appropriate" when referring to local ordinances.

**The commission agrees that these words are not needed when referring to local ordinances. For purposes of clarification, the words "necessary and appropriate" have been deleted.**

Concerning §330.809(b)(6), Safe Tire Disposal Corp. of Texas commented that annual reporting is inadequate, and expressed support for quarterly reporting.

**The commission disagrees with this comment and has made no change in response to this comment. The commission believes that submittal of the summary of activities on an annual basis is adequate, and that on-site records will provide the opportunity for sufficient scrutiny of a facility's operations on a more frequent basis.**

Concerning §§330.809-330.812, HTLP commented that an energy recovery facility storing less than a 30-day supply is intended to be exempt from storage site requirements.

**The commission agrees with this comment. The section has been revised. The commission believes that it is unnecessary to require a registered energy recovery facility to also register as a scrap tire storage site. The facility will not be storing more than a 30-day supply of scrap tires and is already required to maintain records and prepare an annual summary of scrap tire use.**

Concerning §330.810, an individual suggested that any permit have approval from the local mosquito control entity to ensure that the facility has an abatement program for mosquitos and rat propagation.

**The commission has made no change in response to this comment. The commission requires storage sites to describe and follow vector control procedures in the Site Operation Plan that is prepared by a registered professional engineer. Vector monitoring and control procedures are required at storage sites. The commission again notes that city and county governments may adopt ordinances to address specific concerns about local tire management.**

Concerning §330.810(a), the City of Houston commented that it is unclear to whom the regulations regarding the storage of used or scrap tires will apply and the rules seem to imply that an individual is required to obtain a storage site registration if the total number of tires he stores is in excess of the storage thresholds, even if those tires are distributed among numerous sites. The City of Houston recommended a clarification of whether a storage site registration is required for a person, or for a site, with more than 500 or 2000 tires.

**The commission agrees with this comment. The commission has revised the rule to clarify that a registration is required for each site storing more than 500 tires. A storage site registration is required for generators storing more than 500 scrap tires on the ground or 2,000 scrap tires in trailers.**

Concerning §330.810(b), an individual suggested that any applicant for a scrap tire facility permit or registration within 1,500 feet of a single family residence be required to notify all home owners within this radius of the intent to have a variance from this setback.

**The commission disagrees with this comment and has made no change in response to this comment. The commission has included §330.810(b)(2) and (3) and §330.816(a)(9) and (10) to require applicants for scrap tire storage sites and LRPUs to give notice of application to landowners within 500 feet of the proposed site and to publish a general notice in a newspaper of general circulation, which will provide additional notice to all surrounding landowners.**

Concerning §330.810(b)(1), Alcoa commented that this section fails to recognize the situation where a storage site already has, or is required to obtain pursuant to another regulatory program, evidence of financial assurance. Alcoa suggested that no additional financial assurance be required for a project for which financial assurance has already been posted.

**The commission disagrees with this comment. No rule change is required in response to this comment. An owner or operator of a scrap tire site who currently demonstrates financial assurance for closure of its scrap tire activity under a different program would not have to provide duplicative assurances under proposed Chapter 37, Subchapter M regulations (relating to Financial Assurance Requirements for Scrap Tire Sites). However, the owner or operator will be required to submit with the tire registration, a letter describing the current closure plan and the amount of financial assurance currently available at the site. The commission may require additional information from the owner or operator, if needed.**

Concerning §330.810 and §330.815, an individual suggested that any permit have approval from the local fire marshal for fire safety and fire fighting access to the proposed facility.

**The commission agrees with this comment and replies that these rules provide for approval from local fire marshals. The commission has not made a change in response to this comment. In §330.810(b)(9)(D), storage facilities are required to secure approval of the fire protection system from the fire marshal with jurisdiction over the facility. A letter from the fire marshal is also required as part of the application and must state that the fire marshal has reviewed and approved the fire protection aspects of the application, as well as the design of the all-weather roads to accommodate fire fighting vehicles.**

Concerning §330.811, Alcoa recommended that the executive director exempt remote land reclamation projects from the design and operation standards for storage sites where storage, handling and reclamation projects are subject to other permits, since these sections are tailored for urban or at least non-rural areas.

**The commission disagrees with this comment and has made no change to the rule. The commission does not believe it is consistent with the intent of the rules to exempt storage sites from the design requirements for a scrap tire storage site based on the location of the proposed site. In addition, the commission cannot exempt a proposed site based on a permit issued by other state or federal agencies which are not charged with environmental protection.**

Concerning §330.811, Techniserv Inc. recommended that no site should be permitted to have more than 500 tires on the ground or in the open, particularly with regard to facilities near population centers. Storage requirements must be applied to all facilities, particularly landfills and/or monofills.

**The commission disagrees with this comment and has made no change in response to this comment. By statute, the commission may register a site to store more than 500 used or scrap tires (Texas Health and Safety Code §361.112). The storage requirements for landfills and monofills, which are permitted facilities, are found in 30 TAC Chapter 330. The commission believes that storage and disposal sites being operated in compliance with these requirements protect human health and the environment.**

Concerning §330.811, ERRI, Lubbock Waste Tire Recycling, Safe Tire Disposal Corp. of Texas, and TCI suggested leaving the 20 feet setback or grandfathering existing facilities with approved fire plans.

**The commission agrees with this comment. Storage sites registered before January 1, 1998 may maintain setbacks less than 40 feet, under the current registration, if approved in writing by the local fire marshal in the fire plan. These sites will have to meet all the requirements of these rules when the registration is renewed.**

Concerning §330.811, an individual suggested that any used or scrap tire storage facility be prohibited from allowing water to accumulate and provide mosquito incubation.

**The commission disagrees with this comment and has made no change in response to this comment. The commission believes that the vector control measures required in these rules are sufficient. The commission requires in §330.806(c)(4) that generators monitor and use preventive measures for vectors at least once every two weeks. In §330.810(b)(10)(E)(v) and §330.811 (e), vector control procedures are required for any type of vector that may be found at the scrap tire storage site. In §330.813(d)(2), vector control measures are required for scrap tire facilities. If municipalities believe these requirements are not adequate for specific areas of the state, local governments may adopt ordinances to address specific local concerns about tire management such as vector control.**

Concerning §330.811, the City of Houston recommended that generators who store more than 500 tires be required to split, quarter or shred those tires as required by the Texas Health and Safety Code §361.112(f).

**The commission disagrees with this comment. Section 361.112(f) requires that persons who store more than 500 tires must shred, split or quarter the tires. The section also allows the commission to grant an exception to this requirement if the commission finds that circumstances warrant the exception. Registered generators may store up to 2,000 tires in trailers if the storage is temporary. The intent of this rule is to allow generators to accumulate tires in an amount to fill a trailer, making tire collection economical. The commission recognizes that some generators may require more time than others to accumulate a sufficient number of tires for transport. Most**

**generators do not have the equipment needed to split, quarter, or shred tires that are in the process of being transported.**

Concerning §330.811, the City of Houston commented that the requirement to shred tires within 90 days of delivery should apply to facilities other than storage sites as required by §361.112(f) of the Texas Health and Safety Code. The City of Houston also stated that the rules do not specify what constitutes temporary storage.

**The commission responds that the statutory requirement in §361.112(f) of the Texas Health and Safety Code to shred, split, or quarter tires does not apply to registered scrap tire energy recovery facilities. As authorized by §361.112(f) of the Texas Health and Safety Code, the commission has granted an exception to generators who are temporarily storing tires until the scrap tires can be transported.**

Concerning §330.811(a), an individual suggested that any permit be required to have a plan to prohibit non point source pollution of adjacent waterways in the event of a fire requiring large volumes of water to extinguish.

**The commission disagrees with this comment and has made no change in response to this comment. The proposed design requirements require adequate fire protection systems using fire hydrants or a firewater storage pond or tank at the facility. Any illegal discharge to waters of the**

**state is prohibited under §26.121 of the Texas Water Code. Any owner or operator that violates this statute would be subject to enforcement penalties. It is impossible to prepare for every possible contingency and requiring storage sites to provide for unforeseen future events would be cost prohibitive.**

Concerning §330.811(b)(1), NTCC and Techniserv Inc. recommend excluding variances for 8,000 square foot pile size.

**The commission agrees with this comment and has changed the rule accordingly. Variance requests for piles larger than 8,000 square feet will no longer be considered by the executive director; however, existing facilities may maintain approved pile sizes under their current registration. Approval from the executive director and the local fire marshal will be required for larger pile sizes with renewal or amended application requests.**

Concerning §330.811(b)(1), the City of Houston commented that the rules should limit tire piles to 10 feet rather than 15 feet in height, in order to match the limit which has been adopted in several municipalities.

**The commission disagrees with this comment and has made no change in response to this comment. The commission acknowledges that municipalities have the authority to regulate**

**storage of used or scrap tires, but the commission does not believe it is necessary to change the tire pile height limitation across the state to match the standard adopted in some municipalities.**

Concerning §330.811(1), the City of Houston suggested that sites be designed to comply with all local building codes, fire codes and other "applicable" codes, and expressed concerns that fire codes of localities be considered.

**The commission agrees with this comment. As previously stated, the commission acknowledges that municipalities have the authority to regulate storage of used or scrap tires. Therefore, the commission has added language stating that a scrap tire storage site shall be designed in compliance with all local building codes, fire codes and other applicable local codes.**

Concerning §330.812 , Safe Tire Disposal Corp. of Texas recommended the commission receive quarterly reports.

**The commission disagrees with this comment and has made no change in response to this comment. The commission believes that the requirements for facilities to maintain records for three years and to make the records available to the executive director upon request is sufficient to monitor the activities of storage sites.**

Concerning §330.813(b), HTLP commented that the storage site registration requirement is ambiguous and suggested that the rules clarify that energy recovery facilities that store less than a 30-day supply of scrap tires are exempt from the storage site requirements.

**The commission agrees with this comment. For the purpose of clarification, the section has been revised to clarify that a storage site registration is required for 1) a facility that intends to have more than a 30-calendar day supply of tires at the facility site; or 2) a facility that is solely a scrap tire processing facility with no recycling or energy recovery conducted on-site and that intends to store in excess of 500 used or scrap tires on the ground or 2,000 used or scrap tires in trailers.**

Concerning §330.813(d)(4), the City of Houston suggested that the rules clarify what is meant by nuisance.

**The commission disagrees with this comment and has made no change in response to this comment. The term nuisance is defined in 30 TAC §330.2 as "Municipal solid waste that is stored, processed, or disposed of in a manner that causes the pollution of the surrounding land, the contamination of groundwater or surface water, the breeding of insects or rodents, or the creation of odors adverse to human health, safety, or welfare." The commission believes that a scrap tire facility, if operated in accordance with these rules, will not result in nuisance conditions. The rules require that the owner or operator of the scrap tire facility operate the vehicles and equipment to prevent nuisances or disturbances to adjacent landowners and that land**

**reclamation projects be constructed so as not to result in a public nuisance. In addition, the commission notes that city and county governments may adopt ordinances to address zoning restrictions and nuisance concerns. The commission believes that it is appropriate to address statewide concerns and acknowledges the authority of government subdivisions to address local conditions and concerns about nuisances.**

Concerning §330.815, Techniserv Inc. suggested that guidelines for monofilling should conform to guidelines applied to land reclamation, which are designed to allow the long term stability of the tire material when buried.

**The commission disagrees with this comment and has made no change in response to this comment. The commission's rules apply different approval and design standards to monofills and LRPUs. A tire monofill is a below-ground depository, landfill or landfill trench consisting of greater than 50% by volume of tires or tire pieces. A tire monofill requires a permit, because the purpose of a monofill is disposal, as defined by Texas Health and Safety Code, §361.003(7). A tire monofill must also comply with the design and operation standards for a Type IV landfill. The minimum operational standards are prescribed in §§330.50-330.65 (relating to Permit Procedures), §§330.111-330.135 (relating to Operational Standards for Solid Waste Land Disposal Sites), §330.138 and §330.139 (relating to Operational Standards for Solid Waste Land Disposal Sites), §§330.204-330.206 (relating to Groundwater Protection Design and Operation), §330.239 (relating to Groundwater Monitoring at Type IV Landfills), §330.251 (relating to Closure**

**Requirements for MSW Landfill Units That Stop Receiving Waste Prior to October 9, 1991, and MSW Sites), unless otherwise specified in §330.3(e) (relating to Applicability). Waste shall be compacted and covered weekly unless another schedule is approved or required by the commission. Those facilities meeting the requirements of §330.3(e) shall be referred to as Type IV-AE facilities and are exempt from §§330.200-330.206 and §§330.230-330.242 (relating to Groundwater Protection Design and Operation and Groundwater Monitoring and Corrective Action, respectively). A LRPUT is a project which is designed to reclaim land. The rules require that tire shreds be mixed with inert fill material in a proportion no greater than 50% of tire material by volume. Tires or tire pieces shall not be placed below ground for the purpose of disposal as defined in Texas Health and Safety Code, §361.003(7).**

Concerning §330.815, NTCC suggested the commission clarify that the agency will impose restrictions to ensure that monofills will not create additional threats to health and safety through underground fires and hydrocarbon leachate from those fires.

**The commission disagrees with this comment and has made no change in response to this comment. All tire monofills will be permitted facilities, which must meet the regulatory requirements in 30 TAC Chapter 330. The minimum operational standards require a formal permit application and approval, professional engineer design, groundwater protection design and monitoring, and specific operating and closure requirements including weekly covering. The**

**commission believes facilities that operate in compliance with these requirements are protective of human health and the environment.**

Concerning §330.816, Alcoa recommended a permit for all reclamation projects using tires. It seems inappropriate for the commission to rely on only a certification to confirm the adequacy of a reclamation project. This potentially conflicts with the Litter Abatement Act.

**The commission disagrees with this comment and has made no change in response to this comment. A permit will be required for the disposal of tires or scrap tires, such as a monofill. Land reclamation projects are not required to obtain a permit because these projects are not disposal projects. These projects are designed by a professional engineer and approved after staff review. The Litter Abatement Act prohibits the disposal of litter or other solid waste in a place that is not an approved dump site. The Litter Abatement Act does not prohibit the beneficial use of solid waste in a manner that does not constitute disposal.**

Concerning §330.816, Alcoa, Safe Tire Disposal Corp. of Texas, and an individual recommended that the commission allow projects to use a mix greater than 50% tire pieces by volume in LRPUs if the notification is approved by an engineer with data to support more than a 50/50 mix. ERI, Lubbock Waste Tire Recycling, and TCI suggested that the technical requirements for each LRPUs project should stand alone and the percentage of tire shred mix and inert material shall vary according to the engineering determinations of each project.

**The commission disagrees with this comment and has made no change in response to this comment. In 1995, there were three instances where tire shred fills used for highway projects experienced an exothermic reaction causing the fills to heat and ignite. The commission believes that given the unfavorable experiences in Washington and Colorado that have used tire shreds as part of fill projects, a 50% mix of tire shreds and inert material is the maximum which can safely be used in these projects.**

**More than 70 projects where tire shreds were used for fill for highway projects have not experienced an exothermic reaction. Most of these projects used only tires and were not mixed with inert materials. The commission believes that tire shreds can be an ideal construction material in certain cases because they are lightweight, durable, highly permeable which promotes free draining, and have low lateral earth pressure. The use of tire shreds also addresses the management and disposal problem presented by tire accumulation and conserves natural aggregate resources.**

**At least seven other states have tire shred fills including Colorado, Kentucky, Maine, Minnesota, North Carolina, Vermont and Wyoming. These projects vary in thickness from 0.75 feet to 20 feet. In particular, Minnesota reports that in addition to three Minnesota Department of Transportation projects, there are more than 50 projects where whole or shredded tires were used without any exothermic reaction as fill for roads, parking lots and driveways with thicknesses ranging from two to eight feet. In addition, the Virginia Transportation Research Council (VTRC) is monitoring settlement and temperature in a large tire shred/soil mixture fill section on**

**Route 199 in Williamsburg completed in 1993. This project used over 43,000 cubic meters of tire shreds in a 50/50 mixture of soil and tire shreds in a fill section leading to a future interchange bridge. The demonstration project, reported to be the largest such fill in the country, was instrumented to measure settlement, vertical stress, temperature and groundwater changes. Temperature monitoring indicated no evidence of heat generation within the core of the tire shred embankment.**

Concerning §330.816, the City of Houston recommended that the LRPUR portion of the rules be deleted because: 1) the definition of land reclamation projects using tires is vague and would allow for significant abuse; 2) the commission should not accept a professional engineers word that a project would meet the regulatory requirements; 3) there is statutory authority for the disposal of used tires in this manner; 4) the proposed rule conflicts with the Texas Litter Abatement Act; and 5) the proposed rules will be difficult to enforce.

**The commission disagrees with this comment and has made no change in response to this comment. The commission believes that the definition of land reclamation project is clear without being overly restrictive. In addition, the commission believes that design by a professional engineer ensures that the project is designed and completed in a manner consistent with the proposed regulations. The Texas Health and Safety Code §361.011 gives the commission broad authority for the management of municipal solid waste. In addition Texas Health and Safety Code §361.112 states that the commission may issue a permit for the disposal of used or scrap**

**tires. These rules do not conflict with Texas Health and Safety Code §361.112 because a permit is explicitly required for the monofilling (disposal) of used or scrap tires. The commission believes that requiring final certification from a professional engineer will ensure that land reclamation projects are properly designed and completed. The commission does not agree that these rules conflict with the Litter Abatement Act. A permit will be required for the disposal of tires or scrap tires, such as a monofill. Land reclamation projects are not required to obtain a permit because these projects are not disposal projects. The Litter Abatement Act prohibits the disposal of litter or other solid waste in a place that is not an approved dump site. The Litter Abatement Act does not prohibit the beneficial use of solid waste in a manner that does not constitute disposal. Finally, the commission will rely on its regional offices to ensure that land reclamation projects are being constructed according to the approved designs.**

Concerning §330.816, State Representative Dora Olivo commented that she has serious concerns with the proposed rules because Fort Bend County officials are considering filling open pits at a closed landfill with a mixture of soil and tire chips. Representative Olivo commented that a neighboring community in Rosenberg called "Little Mexico" has suffered enough as a result of the Fort Bend County landfill. Representative Olivo further comments that adding tire chips to the landfill would greatly increase the possibility of fires because the tire chips are highly combustible.

**The commission disagrees with this comment, but has made a change in response to this comment to allow for public comment on LRPUs. The commission responds that LRPUs which are**

**designed and operated in compliance with these rules should not adversely affect neighboring communities. In addition, land reclamation projects will not pose a greater threat of fire due to the requirements that the material be mixed with inert fill material rather than receive daily or weekly cover. Nonetheless, the commission has added provisions to the proposed rules which allow any person who has concerns to submit written comments within 30 days of the mailed notice.**

Concerning §330.816, NTCC and Techniserv, Inc. suggested that LRPUs be limited to permitted areas. Financial assurance should be in an amount sufficient to excavate their project and move the material to a safe disposal site, and temperature probes should be required.

**The commission disagrees with this comment and has made no change in response to this comment. A permit will be required for the disposal of used or scrap tires, such as a monofill. Land reclamation projects are not required to obtain a permit because they are not disposal projects. Financial assurance is required for storage sites, but not for reclamation projects. As part of the notification process, the commission can request additional information and believes that projects designed in accordance with these rules will not require excavation. Finally, the commission believes that based on the experience in other states, tire shred fills that are mixed with other fill materials do not require temperature probes. The VTRC has monitored the temperature in one of the large tire shred/soil mixture fill in Williamsburg. This project used over 43,000 cubic meters of tire shreds in a 50/50 mixture of soil and tire shreds in a fill section**

**leading to a future interchange bridge. The demonstration project, reported to be the largest such fill in the country, was built with instruments to measure settlement, vertical stress, temperature and groundwater changes. Temperature monitoring since the construction was completed indicated no evidence of heat generation within the core of the tire shred embankment.**

Concerning §330.816, Blackburn & Carter recommended that a final certification from a professional engineer be required at the close of the project.

**The commission agrees with this comment. Final certification from a professional engineer provides the commission with an additional level of assurance that the project was properly designed and completed. The proposed change has been made.**

Concerning §330.816, two individuals commented that the preamble and §330.816 describe a landfill and make it clear that scrap tires are waste and fit the definition of municipal solid waste per §330.2. An excavation that receives waste is a landfill and the rules require that a landfill meet requirements, submit a permit application, involve public participation, and meet liner, inspection and monitoring specifications.

**The commission disagrees with this comment and has made no change in response to this comment. A permit will be required for the disposal of tires or scrap tires, such as a monofill. The commission agrees that scrap tires meet the definition of municipal solid waste in 30 TAC**

**§330.2. However, the commission makes a distinction between disposing of municipal solid waste in a landfill, which requires a permit, and the beneficial use of scrap tires. The commission believes that scrap tires which are mixed with natural inert material can be used for the purpose of land reclamation with no threat to the environment if these rules are followed. The rules require that land reclamation projects be designed in a manner which does not constitute disposal as defined in §361.003 (7) of the Texas Health and Safety Code. This means that the LRPUs must be designed so that the scrap tires or any constituent thereof are not emitted into the air, discharged into surface water or groundwater, or introduced into the environment in any other manner.**

Concerning §330.816(a), Blackburn & Carter suggested allowing the opportunity for public participation and staff review, including a description of the project operation, developing guidelines for design of project and including provisions for groundwater monitoring.

**The commission has added §330.816(a) which allows for staff review of the project, and §330.816(a)(9) and (10) that require public and local government notice and allow for public comment. The commission does not believe that groundwater monitoring is necessary because the commission does not believe that LRPUs will result in any leaching to groundwater.**

**Tests conducted by state agencies and private research laboratories have found that the levels of metals and organics in the leachate from tire shreds do not exceed primary drinking water**

standards. Radian Corporation tested cured, uncured, ground and unground rubber products using the U.S. Environmental Protection Agency (EPA) Toxicity Characterization Leaching Procedure found no compounds above regulatory limits and concluded that tire chips are not hazardous waste. Inter Mountain Laboratories conducted tests on the leachate from 2 inch by 2 inch shreds using the EPA SW-846 Method, Base Neutral Organics test and the American Foundryman Society (AFS) test and detected only barium at levels well below the regulator limits. The State of Wisconsin also conducted toxicity tests and found no concentrations of metals and no organic compounds above detection limits. The state also conducted an AFS test and found that samples showed a low release pattern and declining concentrations over time and all compounds tested with the exception of manganese were at levels below drinking water standards. Dr. Dana Humphrey at the University of Maine has monitored leachate from tire chips used in field studies placed both above and below the groundwater table. The monitoring efforts above the groundwater table detected no concentrations of metals above primary drinking water standards and no concentrations of metals above secondary drinking water standards with the exception of manganese and iron. Tests for volatile and semi-volatile organics found no detectable levels for all measured compounds. In projects using tires below the groundwater table, concentrations of metals were found to be below drinking water standards and some volatile and semi-volatile organics were found at low levels. Balsam tested the leachate from tire shreds used in the final cap of a landfill and found that the levels of concentrations of targeted compounds did not exceed primary drinking water standards.

Concerning §330.816(a)(5)(c), Blackburn & Carter commented that the section should be reworded as follows: tires or tire pieces shall not be placed below ground in a manner that constitutes disposal as defined in Texas Health and Safety Code §361.003.

**The commission agrees with this comment. The proposed rule stated that tires or tire pieces shall not be placed below ground for the purpose of disposal. The commission agrees that it is difficult to determine what “purpose” means in this context. For purposes of clarification, the proposed change has been made.**

Concerning §330.816(b), Blackburn & Carter suggested that land reclamation projects should only allow the restoration of the land to its approximate natural grade.

**The commission agrees with this comment but has made no change in response to this comment. The proposed definition of land reclamation and LRPOT already describes the purpose of land reclamation to be to restore the land to its approximate natural grade.**

Concerning §330.816(b), two individuals commented that the intention of one who would excavate a pit cannot be known and the proposed rules would allow a number of illegal conversions to landfills.

**The commission has made no change in response to this comment. Proposed §330.816(a)(7) requires the property owner to sign an affidavit that the pit existed before the project and that the**

**project will be completed to comply with the regulations. Any property owner who excavates a pit or hole for the sole purpose of reclaiming that land will be in violation of commission rules and risks enforcement or other administrative penalty.**

Concerning §330.816(e)(j), Blackburn & Carter commented that processing scrap tires must not be allowed in a land reclamation project.

**The commission disagrees with this comment and has made no change in response to this comment. The commenter has provided no specific concerns and the commission believes that there is no reason to prohibit tire processing in a land reclamation project.**

Concerning §330.816(g), Alcoa intends to use bottom ash in its reclamation projects which is clearly a suitable natural fill material to mix with tires for reclamation.

**The commission responds that if the bottom ash, which this commenter intends to use, qualifies as non-hazardous inert fill material then it may be used in a land reclamation project.**

Concerning §330.816(j), Blackburn & Carter recommended that LRPUs be prohibited from registering as storage sites or facilities.

**The commission disagrees with this comment and has made no change in response to this comment. The commission believes that some LRPUs will, by necessity, be required to register as storage sites during the design and completion of the project.**

Concerning §330.821, the City of Houston suggested that cost estimates for closure that include disposing of the tires and closing the facility be made in current dollars on the date the facility is projected to cease operations and add a provision that the local government must be named as an additional insured or surety on any insurance policy.

**The commission disagrees with this comment and has made no change in response to this comment. Closure estimates are already required to be maintained in current dollars as specified in §37.3011 which references Subchapter B of Chapter 37. Section 37.131 (relating to Annual Inflation Adjustments to Closure Cost Estimates) requires annual inflation adjustments, therefore, no rule change is needed. Regarding adding a provision which names the local government as an additional insured, the statute requires the commission to use the financial assurance for closure in order to protect the state from incurring the cost of closure. The mechanisms are worded to allow the commission to draw on the funds if the site is abandoned or the owner/operator does not comply with the regulations. The rules do not prohibit a local government from taking action against the owner/operator of a tire facility who is not in compliance with any local government rule or ordinance. Therefore, no rule change is made in response to this comment.**

Concerning §330.821, ERRI, Lubbock Waste Tire Recycling, and TCI suggested that sites be allowed to keep their current financial assurance arrangements until the registration expires.

**The commission disagrees with this comment and has made no change in response to this comment. At the time a registration is renewed, an owner/operator of a tire facility will be required to comply with Chapter 37, Subchapter C (relating to Financial Assurance Mechanisms for Closure) and Subchapter D (relating to Wording of the Mechanisms for Closure). All other provisions, including adjusting the closure cost estimate for inflation, will become effective 90 days after the adoption of Chapter 37, Subchapter M (relating to Financial Assurance Requirements for Scrap Tire Sites).**

Concerning §330.821(a), ERRI, Lubbock Waste Tire Recycling, and TCI recommend that storage site applicants be given a choice of formula calculation or third party estimate for financial assurance calculations.

**The commission disagrees with this comment and has made no change in response to this comment. The commission believes that a third party estimate is preferable to a formula calculation due to the variety of site specific factors contributing to the closure cost calculation.**

NTCC and Techniserv Inc. commented on the use of tire shreds as alternative daily cover in landfills.

**The commission has made no change in response to this comment. This comment is not within the scope of the proposed rules.**

Concerning baling, ERRI, Lubbock Waste Tire Recycling, and TCI recommended that baling operations be subject to regulations required for processors and storage facilities. Balers should be required to provide legitimate end uses for bales and required to post financial assurance for cleanups from the eventual decomposition.

**The commission agrees with this comment. For the purposes of adequately regulating used and scrap tires, facilities that bale tires should be subject to the same requirements as tire processors.**

**The commission has changed the rule accordingly.**

#### STATUTORY AUTHORITY

The amendment is adopted under the Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Code and other laws of the State of Texas, and to establish and approve all general policy of the commission; under Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361, §361.112, relating to the Storage, Transportation, and Disposal of Used or Scrap Tires, and under the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361, §361.011 and §361.024 which provide the commission with the authority to regulate municipal solid waste and adopt rules consistent with the general intent and purposes of the Act.



## **SUBCHAPTER P : FEES AND REPORTING**

### **§330.601. Purpose and Applicability.**

(a) Purpose.

(1) Fees. The commission is mandated by the Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361, to collect a fee for solid waste disposed of within the state, and from transporters of solid waste who are required to register with the state. Fee requirements for persons who collect and/or transport municipal wastewater treatment plant sludges, water supply treatment plant sludges, grit trap waste, grease trap waste, and septage are contained in §330.448 of this title (relating to Transporter Fees). Persons desiring to transport or deliver waste in enclosed containers or enclosed vehicles to a Type IV municipal solid waste management facility are subject to special route permit application and maintenance fees set forth and described in §330.32 of this title (relating to Collection and Transportation Requirements). The fee amount may be raised or lowered in accordance with spending levels authorized by the legislature.

(2) - (3) (No change.)

(b) (No change.)



## **SUBCHAPTER R : MANAGEMENT OF WHOLE USED OR SCRAP TIRES**

The repeals are adopted under the Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code and other laws of this state. These amendments and new sections are also adopted under the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361, §361.011 and §361.024, which provide the commission with the authority to regulate municipal solid waste and adopt rules consistent with the general intent and purposes of the Act.

- §330.801. Purpose.**
- §330.802. Applicability.**
- §330.803. Definitions.**
- §330.804. The Use of Tire Shreds in Landfills.**
- §330.805. Generators of Scrap Tires.**
- §330.806. Generator Registration.**
- §330.807. Generator Record Keeping.**
- §330.808. On Site Storage.**
- §330.809. Transportation Requirements.**
- §330.810. Penalties for Generators.**
- §330.811. Transporters of Whole Used or Scrap Tires.**
- §330.812. Transporter Registration.**

- §330.813. **Delivery Requirement.**
- §330.814. **Vehicle and Equipment Sanitation Standards.**
- §330.815. **Transporter Record Keeping.**
- §330.816. **Interstate Transportation.**
- §330.817. **Transporter Fees.**
- §330.818. **Penalties for Transporters.**
- §330.820. **Processor's WTRF Allocation Method.**
- §330.821. **Processor's WTRF Allocation Model Factors.**
- §330.822. **Calculation of Factors for Processor's WTRF Allocation Model.**
- §330.823. **Determination of the Weighing Factors for the Processor's Allocation Model.**
- §330.824. **Notification of Allocation.**
- §330.825. **Fiscal Audits.**
- §330.826. **WTRF Fiscal Audits.**
- §330.827. **Overpayment from the WTRF.**
- §330.828. **WTRF Program Reviews, Applicability and Responsibility.**
- §330.829. **WTRF Program Reviews.**
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- §330.888. Wording of the Instruments.**
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## **SUBCHAPTER R : MANAGEMENT OF USED OR SCRAP TIRES**

The new sections are adopted under the Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code and other laws of this state. These amendments and new sections are also adopted under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361, §361.112(b) which provides the commission with the authority to register a site to store more than 500 used or scrap tires, §361.112(e) which provides the commission with the authority to adopt forms and procedures for the registration and permitting, and §361.112(m) which provides the commission with the authority to adopt rules to regulate storage of scrap or shredded tires that are stored at a marine dock, rail yard, or trucking facility.

### **§330.801. Purpose.**

The purpose of the rules in this subchapter is to establish procedures and requirements for the safe storage, transportation, processing, utilization, and disposal of used or scrap tires or tire pieces.

### **§330.802. Applicability.**

(a) This subchapter does not preempt local ordinances regarding the management of used or scrap tires that are as or more stringent than the regulations in this subchapter. All persons or facilities

regulated by this subchapter must comply with all applicable local ordinances that are not inconsistent with the regulations in this subchapter. A local ordinance is not inconsistent with this subchapter if a regulated person or facility can simultaneously comply with both the state and local requirements.

(b) This subchapter applies to persons that are involved in the generation, transportation, processing, storage, utilization, and disposal of used or scrap tires or tire pieces that are classified as municipal solid waste, recyclable materials, or inert fill materials. This subchapter does not apply to whole used or scrap tires that are classified as industrial solid waste.

(c) All used or scrap tires or tire pieces, except for tires collected incidentally by municipal solid waste collection vehicles, are subject to manifesting by generators according to the requirements in §330.808 of this title (relating to Manifest System).

(d) Scrap tires that are off-the-road tires intended for use on heavy machinery, including, but not limited to, an earth mover/dozer, a grader, or mining equipment are exempt from the requirements to be split, quartered or shredded at a storage site or a permitted landfill.

**§330.803. Definitions.**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Other definitions, pertinent to specific sections, are

contained within the appropriate sections. Definitions that apply to all of Chapter 330 are in §330.2 of this title (relating to Definitions).

(1) **30-Day supply** - An amount equal to the highest documented monthly consumption of tires consumed for energy recovery or legitimately recycled in the six-month period preceding the month for which the supply is being calculated. A facility in operation for less than six months shall submit an estimate of a 30-day supply for commission review, evaluation and approval.

(2) **Alter** - To modify any record or document kept or received by any entity subject to the requirements of this subchapter.

(3) **Authorized representative** - A facility owner or a person designated in writing by a facility owner to sign documents, make commitments for the entity, and represent the entity in all matters related to the application for registration or permit.

(4) **Authorized scrap tire facility** - A facility authorized to accept scrap tires including, but not limited to, a registered scrap tire storage site, scrap tire facility or permitted landfill.

(5) **Closure** - The cessation of acceptance of used or scrap tires or tire pieces for processing and/or storage which results in taking the facility out of service.

(6) **Facility** - All contiguous land and structures, other appurtenances, and improvements on the land used for the storage or processing of scrap tires.

(7) **Fleet operator** - An entity that owns or operates more than 15 vehicles and generates 30 or more used or scrap tires per calendar quarter.

(8) **Generator** - An entity, except a scrap tire energy recovery facility and a scrap tire recycling facility, that is a fleet operator, is an automotive dismantler, or is a whole new or used tire retailer, wholesaler, manufacturer, recapper or retreader.

(9) **Good used tire** - A used tire, not including a recapped or retreaded tire, suitable for continued use for its original intended purpose.

(10) **Land reclamation** - The filling, rehabilitating, improving and restoring of excavated and/or deteriorated and/or disturbed land for the purpose of restoring the land to its approximate natural grade and to prepare or reclaim the land for re-use.

(11) **Land reclamation projects using tires (LRPUT)** - A project to fill, rehabilitate, improve and/or restore already excavated, deteriorated or disturbed land, which uses no more than 50% by volume of tire pieces along with inert fill materials, for the purpose of restoring the land to its approximate natural grade and to prepare or reclaim the land for re-use. Projects for the use of used or scrap tires or tire pieces as a component of an On-Site Sewage Facility as defined in §285.50 of this title (relating to General Requirements for Registration and Certification) are not included in this definition.

(12) **Manufacturer reject tire** - A tire rendered defective in the manufacturing process, whether the tire is determined to be defective before or after consumer purchase.

(13) **Off-the-road tire** - A tire intended for use on heavy machinery, including, but not limited to, an earth mover/dozer, a grader, agricultural machinery or mining equipment. Truck tires are not off-the-road tires.

(14) **Operator** - The person responsible for the overall operation of the facility.

(15) **Owner** - The person or company who owns the facility or part of a facility.

(16) **Processing** - The extraction of materials from or the transfer, volume reduction, conversion to energy or separation and preparation of solid waste for reuse or disposal.

(17) **Professional engineer** - A person licensed by The Texas Board of Professional Engineers to practice engineering in the State of Texas.

(18) **Scrap tire** - A whole tire that can no longer be used for its original intended purpose. A whole used tire that can be used, reused or legally modified to be reused, for its original intended purpose is not a scrap tire.

(19) **Scrap tire facility** - A facility that processes, conducts energy recovery or recycles used or scrap tires or tire pieces.

(20) **Scrap tire storage site** - A registered facility where more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or more than 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers. The term does not include a transportation facility or a scrap tire facility that stores on-site no more than a 30 calendar day supply of used or scrap tires or tire pieces.

(21) **Scrap tire transporter** - A registered entity that collects and transports used or scrap tires or tire pieces for storage, processing, recycling or energy recovery.

(22) **Tire monofill** - A below-ground depository, landfill or landfill trench consisting of greater than 50% by volume of tires or tire pieces.

(23) **Tire piece** - A particle of a scrap tire or scrap tire piece that has been split, quartered or shredded to a usable size such as two-inch minus, or other size required by an industry user or recycler.

(24) **Tire processor** - A registered scrap tire facility where used or scrap tires or tire pieces are collected and shredded or baled for delivery to a scrap tire storage site, or to a facility that recycles, reuses or recovers the energy from the tire pieces. Mobile tire processing facilities shall be considered scrap tire facilities and required to comply with all applicable requirements contained in this subchapter relating to scrap tire facilities.

(25) **Tire shredder** - A piece of equipment used to split, shred or quarter tires, whether stationary, or mounted on wheels or skid mounted.

(26) **Trailer** - For the purposes of this chapter only, an enclosed, portable and lockable container for the storage of less than 2,000 used or scrap tires. This may include a trailer, railcar, roll-off container, or dumpster.

(27) **Transportation facility** - A facility such as a marine terminal, rail yard, or trucking facility where scrap tires or tire pieces may be stored for periods longer than 30 consecutive calendar days.

**§330.804. General Requirements.**

(a) An entity that violates the applicable sections of this subchapter shall be subject to any action authorized by law to secure compliance, including the assessment of administrative penalties or civil penalties as prescribed by law, and the suspension or revocation of registration or permit.

(b) Before disposal, whole used or scrap tires may not be commingled with any other type of scrap material or solid waste, except for incidental scrap tires picked up in enclosed municipal solid waste collection vehicles.

(c) Any permitted municipal solid waste landfill site may store or process whole tires or tire pieces in an unused portion of the property within its permit boundary dedicated to tires only. Storage shall be above ground in controlled storage piles or in enclosed and lockable containers, pursuant to §330.811 of this title (relating to Design Requirements for Scrap Tire Storage Site). A permitted municipal solid waste landfill site shall not store tires or tire pieces in excess of 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers without prior written approval from the executive director or the commission. Approval of storage or processing shall be by authorization for such storage in an approved Site Development Plan, or, as applicable, through a Class I permit modification under §305.70 of this title (relating to Municipal Solid Waste Class I Modifications) or an amendment under §305.62 of this title (relating to Amendment). The tire storage and/or processing activity shall not be conducted in a manner that will adversely affect

operations of the municipal solid waste disposal site, or otherwise endanger human health or the environment.

(d) All vehicles and equipment used for the collection and transportation of used or scrap tires or tire pieces, except for those vehicles listed in §330.807(b)(4) and (5) of this title (relating to Transporter Requirements), shall be constructed, operated, and maintained to prevent loss of used or scrap tires or tire pieces during transport and to prevent health nuisances and safety hazards to operating personnel and the public. Collection vehicles and equipment shall be maintained in a sanitary condition to prevent odors and insect breeding. Any vehicle or trailer used to transport used or scrap tires or tire pieces shall be identified on both sides and the rear of the vehicle. The identification shall consist of the name and place of business of the transporter and the commission registration number, using numbers and letters at least two inches tall. Trailers or trucks used to transport used or scrap tires shall either be fully enclosed and lockable, or have sidewalls of sufficient height to contain the load. Trailers and trucks transporting used or scrap tires in excess of the sidewall height of the vehicle shall be covered with a tarp during transit. Trailers and trucks transporting any amount of tire pieces shall be covered with a tarp during transit.

(e) A person who, for eventual recycling, reuse, or energy recovery, temporarily stores used or scrap tires in a designated recycling collection area at a permitted landfill may be granted an exemption from shredding, splitting or quartering the scrap tires by the executive director, upon request.

**§330.805. Registration Requirements.**

Registration requirements for scrap tire storage sites, scrap tire facilities, transportation facilities, and transporters are as follows:

(1) An application for a registration shall be made on a form obtained from the executive director, upon request. The applicant may deliver the completed application to any commission regional office or mail it to the following address: Texas Natural Resource Conservation Commission, P.O. Box 13087, Mail Code 125, Austin, Texas 78711-3087. The following registration information must be provided to the executive director:

(A) the name, mailing address, county, and telephone and facsimile numbers of the applicant;

(B) the name, mailing address, and telephone number of the property owner where the scrap tire storage site, scrap tire facility, or transportation facility is located;

(C) the street location of the scrap tire storage site, scrap tire facility, or transportation facility, including county;

(D) the approximate number of used or scrap tires or tire pieces (in tons) that will be stored at the scrap tire storage site or the scrap tire facility;

(E) the existing land use surrounding the scrap tire storage site, scrap tire facility, or transportation facility; and

(F) the tax identification number.

(2) The application must be signed by the authorized representative and, if applicable, the professional engineer who assisted in its preparation.

(3) Entities that are registered by the executive director shall maintain a copy of their commission registration notice at their designated place of business.

(4) A registered entity shall provide written notice to the executive director, within 15 days, if:

(A) the mailing address or telephone number of the entity changes;

(B) the office or designated place of business is relocated;

(C) the applicant's registered name is changed; or

(D) the authorized representative has changed. If the authorized representative has changed, a registered entity shall provide a written, signed designation of the new authorized representative, including the representative's name, mailing address, and telephone and facsimile numbers.

(5) Within 10 days of a change in ownership, or if a change in operations or management methods occurs such that the existing registration no longer adequately describes current operations or management methods, the registered entity shall submit a new registration application to the executive director. Following a determination, the executive director may issue a new registration, cancel the old registration or transfer the old registration to the new registrant. Timeliness of required submittals may be a factor in the executive director's determination.

(6) Annulment, suspension, revocation or denial of registration procedures are as follows:

(A) The executive director may annul, suspend or revoke a registration or deny an initial or renewal registration for:

(i) failure to maintain complete and accurate records required under this chapter;

(ii) failure to maintain vehicles in safe working order as evidenced by at least two citations per vehicle from the Texas Department of Public Safety or local traffic law enforcement agencies;

(iii) failure to maintain equipment in safe working order;

(iv) altering any record maintained or received by the registrant;

(v) delivery of used or scrap tires or tire pieces to a facility not registered to handle the tires, unless the facility receiving the tires is exempt from registration under §330.804(c) of this title (relating to General Requirements);

(vi) failure to comply with any rule or order issued by the commission pursuant to the requirements of this chapter;

(vii) failure to submit any applicable annual report;

(viii) failure to pay registration fees;

(ix) failure to maintain financial assurance as required;

(x) dumping of used or scrap tires or tire pieces illegally;

(xi) collection, storage, transportation or processing of used or scrap tires or tire pieces without registration, as required in this section;

(xii) failure to notify the executive director of any change in registration information as required in paragraph (4) of this section; or

(xiii) failure to obtain and maintain necessary approvals or certifications from the Fire Marshal with jurisdiction over the facility location;

(B) A registration shall be suspended for a period of one year; however, depending upon the seriousness of the offense(s), the time of suspension may be increased or decreased. A registration is revoked automatically upon a second suspension. If the registration is suspended or revoked, an entity shall not collect, store, transport or process used or scrap tires or tire pieces regulated under this subchapter.

(C) The holder of a registration that has been revoked by the executive director may reapply for registration under to this subchapter as if applying for the first time, after a period of at

least one year from the date of revocation. If a registration is revoked by the executive director a second time, the revocation shall be permanent.

(D) Appeal of annulment, suspension, revocation or denial of initial or renewal registration procedures are as follows:

(i) An opportunity for a formal hearing on the annulment, suspension or revocation of registration may be requested in writing by the registrant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of proposed revocation or denial of registration has been sent from the executive director to the last known address of the registrant, as shown in the records of the agency.

(ii) An opportunity for a formal hearing on the denial of registration or renewal of registration may be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of denial has been sent from the executive director to the last known address. If the registration is denied, a person shall not collect, store, transport or process used or scrap tires or tire pieces.

(iii) The formal hearing under this paragraph shall be a contested case in accordance with the requirements of the Administrative Procedures Act, Texas Government Code

Annotated, §2001 et seq. and the Texas Solid Waste Disposal Act, Texas Health and Safety Code  
Annotated Chapter 361 and the rules of the commission.

**§330.806. Generator Requirements.**

(a) Generator registration requirements include the following.

(1) Generators storing more than 500 tires shall obtain a registration number from the executive director. The generator must contact the executive director, identify the business as a generator, provide the business name, tax identification number, mailing address, physical location, and the city and county where the generator is located.

(2) The generator shall notify the executive director within 15 days, in writing, of any changes to the generator information.

(b) Each generator shall be responsible for ensuring that scrap tires or scrap tire pieces are transported by a registered transporter to an authorized facility.

(c) Each generator shall use manifests, work orders, invoices or other records to document the removal and management of all scrap tires generated on-site.

(d) The following requirements apply to on-site storage by generators:

(1) Generators may store used or scrap tires or tire pieces at the location where they are generated, provided the total number of used or scrap tires does not exceed 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in trailers.

(2) Generators who store used or scrap tires in excess of 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in trailers shall be required to obtain a scrap tire storage registration pursuant to §330.805 of this title (relating to Registration Requirements);

(3) Retailers and wholesalers who sell good used tires as a commodity shall do so only from stock that has been sorted, marked, classified, and arranged in an organized manner for sale to the consumer, or has been designated on the manifest as removed for reuse by a registered transporter. Used tires that are to be resold as commodities, but are not sorted, marked, classified, and arranged in an organized manner for sale to the consumer, shall be considered as stockpiled scrap tires and the site shall be subject to registration as a scrap tire storage site; and

(4) Tires stored outside shall be monitored for vectors, and appropriate vector control measures shall be utilized at least once every two weeks.

(5) Generators who store more than 500 used or scrap tires are exempt from the requirement to shred, split, or quarter the used or scrap tires provided that the tires are awaiting transport.

(e) A generator of used or scrap tires may transport its scrap tires between its own business locations or to an authorized facility without a transporter registration, but must still comply with all manifesting requirements in §330.808 of this title (relating to Manifest System) and record keeping requirements in §330.807(d) of this title (relating to Transporter Requirements).

**§330.807. Transporter Requirements.**

(a) Applicability. This section establishes standards applicable to transporters collecting and hauling used or scrap tires or tire pieces.

(b) Exemptions.

(1) Used or defective tires shipped back to the manufacturer or manufacturer's representative for adjustment are not required to be transported by a registered transporter, provided the generator retains, for a period of three years, written records of the shipments, indicating the date of shipment, destination and the number of tires in each shipment. These records shall be made available to the executive director upon request.

(2) Any person who is registered with the executive director as an On-Site Sewage Facility Installer under §285.50 of this title (relating to General Requirements for Registration and Certification) may transport used or scrap tires or tire pieces for construction of an on-site sewage disposal system without a transporter registration, but must still comply with all manifesting requirements under §330.808 of this title (relating to Manifest System) and record keeping requirements in subsection (d) of this section.

(3) Retreaders who haul tires from customers for the purpose of retreading or who return tires to customers after retreading or recapping, do not have to register as transporters; however, they must register as transporters if they haul tires to an authorized facility.

(4) Trucks engaged in municipal solid waste collection or commercial route collection which handle incidental loads of used or scrap tires or tire pieces as part of their normal household or commercial collection activities, may transport such incidental small quantities of scrap tires to a landfill, transfer station or other collection point for proper handling without a transporter registration.

(5) Transport vehicles owned and operated by municipalities, counties, or other governmental entities or agencies which are used to transport used or scrap tires to an authorized facility or to a facility used by local or other governmental entities or agencies to collect used or scrap tires shall be exempt from registration under this section; however, each load of used or scrap tires shall be manifested in accordance with §330.808 of this title.

(c) General requirements.

(1) Transporters shall register their operations with the executive director before conducting business, according to the registration procedures outlined in §330.805 of this title (relating to Registration Requirements).

(2) Transporters shall maintain records using a manifest system, as required in §330.808 of this title.

(3) Each transporter shall be responsible for ensuring that used or scrap tires or tire pieces are transported to an authorized scrap tire facility.

(4) Each transporter shall notify the generator of any changes to the manifest. A written notification must be received by the generator within two weeks of any changes.

(d) Maintenance of records. The transporter shall retain all manifests, work orders and invoices showing the collection and disposition of all used or scrap tires and tire pieces. Records shall be retained by the transporter at the designated place of business for a period of at least three years and made available to the executive director upon request.

(1) Any change made to the face of an original record shall be made by drawing a single line through the item being changed, ensuring that the item remains legible and readable. To the side of the mark, the person making the change shall place his/her initials with the date of the change.

(2) Any change made to the face of an original record shall be accompanied by a written justification stating the reason and purpose for the change. This written justification shall be prepared simultaneously with the change to the original record, attached to the original record, maintained at the designated place of business for a period of at least three years, and made available to the executive director upon request. The justification shall include the date of the change, and the full name and position of the individual making the change.

(e) Annual report. Transporters shall submit to the executive director an annual report of their activities from January 1 through December 31 of each calendar year showing the number and type of used or scrap tires collected listed by generator name and address, the disposition of the tires, and the number of whole used or scrap tires delivered to each facility. The report shall be submitted no later than March 1 of the year following the end of the reporting period. The report shall be prepared on a form provided by the executive director.

(f) Interstate transportation. Persons who engage in the transportation of used or scrap tires or tire pieces from Texas to other states or countries, or from other states or countries to Texas, or persons who collect or transport used or scrap tires or tire pieces in Texas but have their place of

business in another state or country, shall comply with all of the requirements for transporters contained in this subchapter. If such persons also engage in any activity of managing used or scrap tires or tire pieces in Texas by storage, processing or disposal, they shall follow the applicable requirements for operators of such activities. Persons who engage in the transportation of used or scrap tires or tire pieces which do not originate or terminate in Texas, are exempt from these regulations, except for §330.804(d) of this title (relating to General Requirements).

**§330.808. Manifest System.**

(a) Generators shall obtain from the transporter collecting tires from their place of business and maintain a record of each individual load of used or scrap tires or tire pieces hauled off from their business location. The record shall be in the form of a five-part manifest or other similar documentation approved by the executive director. The generator shall complete the information pertaining to generator name, address, and telephone number, number of tires removed on the manifest, and registration number, if applicable. The generator shall indicate the destination of all used or scrap tires or tire pieces removed from the business location. A representative of the generator shall sign the manifest acknowledging that the information on the manifest is true and correct.

(b) The transporter shall complete the information on the manifest pertaining to transporter name and registration number and the transporter's driver's license number and the state where the license was issued. The transporter shall record the number and type of scrap tires removed from the

generator and delivered and the location of any whole used or scrap tires removed from the load and delivered. Transporters shall maintain a manifest record of each individual collection and delivery. The transporter shall sign the manifest acknowledging that the information on the manifest form is true and correct. If the transporter removes, for beneficial reuse, all tires from an individually manifested load, the transporter shall return the original manifest to the generator within 60 days of the date of collection.

(c) The authorized facility accepting delivery of the used or scrap tires or tire pieces shall complete the information on the manifest pertaining to the authorized facility identification and number or weight of tires or tire pieces accepted for delivery. A representative of the authorized facility shall sign the manifest acknowledging that the information on the manifest form is true and correct. The authorized facility shall ensure that the top original of the five-part manifest is completely filled out and returned to the generator within 60 days of the date and time of collection as indicated in Section 1 of the manifest.

(d) A generator shall obtain the completed manifest within 60 days after the scrap tires or tire pieces were transported off-site by the transporter.

(e) The generator shall notify the appropriate commission regional office of any transporter or authorized scrap tire facility that fails to complete the manifest, alters the generator portion of the

manifest, or fails to return the manifest within three months after the off-site transportation of the used or scrap tires or tire pieces.

(f) Originals of manifests, work orders, invoices or other documentation used to support activities related to the accumulation, handling, and shipment of used or scrap tires or scrap tire pieces shall be retained by the generator for a period of three years. All such records shall be made available to the executive director upon request.

(1) Any change made to the face of an original record shall be made by drawing a single line through the item being changed, ensuring that the item remains legible and readable. To the side of the mark, the person making the change shall place his or her initials with the date of such change.

(2) Any change made to the face of an original record shall be accompanied by a written justification stating the reason and purpose for the change. This written justification shall be prepared simultaneously with the change to the original record, attached to the original record, maintained at the designated place of business for a period of at least three years, and made available to the executive director upon request. The justification shall include the date of the change, and the full name and position of the individual making the change.

(3) Should the executive director identify discrepancies/errors in records, an opportunity will be given to justify, in writing, any such errors or discrepancies.

**§330.809. Storage of Used or Scrap Tires or Tire Pieces.**

(a) Applicability. This section establishes standards applicable to persons that store or intend to store more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or more than 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in trailers on any public or privately owned property. Persons that store used or scrap tires or tire pieces shall register in accordance with this subchapter. This subchapter does not apply to the use of tires in the storage, protection, or production of agricultural commodities.

(b) General requirements.

(1) All owners and/or operators shall properly register their property with the executive director if the intended use of the property is for the storage of used or scrap tires or tire pieces, pursuant to §330.805 of this title (relating to Registration Requirements).

(2) When a properly registered storage site begins operations, the owner or operator shall file in the county deed records an affidavit to the public advising that the land has been used for a tire storage facility.

(3) Owners and/or operators shall ensure that the tire transporters or mobile tire processors that deliver scrap tires or tire pieces to their registered scrap tire storage site have manifested the used or scrap tires or tire pieces, pursuant to §330.808 of this title (relating to Manifest System).

(4) Owners and/or operators of scrap tire storage facilities shall obtain all required state and local permits, licenses, or registrations and operate in compliance with such permits, licenses, or registrations, or other applicable state and local codes.

(5) Owners and/or operators shall maintain a copy of the mechanism for financial assurance on-site as specified in Chapter 37, Subchapter M of this title (relating to Financial Assurance Requirements for Scrap Tire Storage Facilities) which shall be made available for inspection by the executive director or authorized agents or employees of local governments having jurisdiction to inspect the storage facility.

(6) Owners and/or operators shall submit to the executive director an annual summary of their activities from January 1 through December 31 of each calendar year, showing the number and disposition of used or scrap tires or tire pieces received, and the number of used or scrap tires or tire pieces removed from the facility. The annual report shall be submitted no later than March 1 of the year following the end of the reporting period. The annual report shall be prepared on a form provided by the executive director.

**§330.810. Scrap Tire Storage Site Registration.**

(a) Registration required. Persons who store more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers at a facility shall be required to obtain a scrap tire storage site registration for that facility from the executive director pursuant to §330.805 of this title (relating to Registration Requirements). Storage activities shall not begin until the executive director approves the registration.

(b) Application requirements.

(1) The application for a scrap tire storage site registration, amended registration, or renewal shall consist of: the application form; site and surrounding area information; engineering information, including a site layout plan and a site operating plan; and evidence of financial assurance as required under this section.

(2) Upon filing a registration application, the applicant shall mail a copy of the application to the appropriate county judge and shall mail notice that an application has been filed to the appropriate regional council of government and the appropriate mayor if the proposed facility is to be located within the corporate limits or extraterritorial jurisdiction of a city. Proof of mailing shall be provided in the form of return receipts for registered mail.

(3) Upon filing a registration application, the facility owner or operator shall provide notice to the general public by means of a notice by publication and a notice by mail. Each notice shall specify both the name, affiliation, address, and telephone number of the applicant and of the commission employee who may be reached to obtain more information about the application to register the site. The notices shall specify that the registration application has been provided to the county judge and that it is available for review by interested parties. The applicant shall publish notice in the county in which the facility is located, and in adjacent counties. Notice shall be published in a newspaper of general circulation. The published notice shall be published once a week for three weeks. The applicant should attempt to obtain publication in a Sunday edition of a newspaper. The notice by certified mail, return receipt requested, shall be sent to all adjacent landowners and all owners of property within 500 feet of the boundary of the facility; the health authorities of the city and county in which the facility will be located, if applicable; and the appropriate state senator and representative for the area encompassing the facility.

(4) Applications shall be submitted in triplicate.

(5) Preparation of the application shall be in accordance with the requirements of the Texas Engineering Practice Act, Article 3271a, Vernon's Annotated Texas Statutes. Each sheet of engineering plans, drawings, maps, calculations, computer models, cost estimates, and the title or contents page of the application shall be signed and sealed by a professional engineer in accordance with the Rules of the Texas Board of Professional Engineers.

(6) Drawings shall be legible and include a dated title block, scale, and responsible engineer's seal, if required. If color coding is used, it should be legible and the code distinct when reproduced on black and white photocopy machines. Drawings shall be submitted using a standard engineering scale.

(7) Each map or plan drawing shall have a north arrow, a legend and a reference to the base map source and date if the map is based upon another map. The latest revision of all maps shall be used. Maps shall show the following:

(A) all structures and inhabitable buildings within 500 feet of proposed site;

(B) location of all roads within one mile of the site that will normally be used to access the site;

(C) latitudes and longitudes;

(D) area streams;

(E) the property boundary of the site; and

(F) drainage, pipeline, and utility easements within or adjacent to the site.

(8) The applicant or an authorized representative shall provide a signed statement representing that he or she: is familiar with the application and all supporting data; is aware of all commitments represented in the application; is familiar with all pertinent requirements in these regulations; and agrees to develop and operate the scrap tire storage site in compliance with the application, applicable local and state regulations, and any special provisions that may be imposed by the executive director.

(9) Site and surrounding area information includes the following.

(A) Maps.

(i) Location maps. These maps shall be all or a portion of county maps prepared by Texas Department of Transportation. At least one general location map shall be at a scale of one-half inch equals one mile. These maps may be obtained at a nominal cost from the nearest District Highway Engineer Office or by writing to: Texas Department of Transportation, Attention: Transportation Planning Division (D-10), P. O. Box 5051, West Austin Station, Austin, Texas 78763-5051;

(ii) Topographic maps. These maps shall be United States Geological Survey 7 ½-minute quadrangle sheets or equivalent, marked to show the storage site boundaries and

roadway access. These maps may be obtained at a nominal cost from: Branch of Distribution, United States Geological Survey, Federal Center, Denver, Colorado 80225;

(iii) Land ownership map and list. This map shall locate the property owned by potentially affected landowners. The map shall show all property ownership within 500 feet of the site. A list shall be provided that gives each property owner's and easement holder's name and mailing address. The list shall be keyed to the Land Ownership Map.

(iv) Floodplain maps. These maps shall be the appropriate Federal Emergency Management Agency maps or other demonstration acceptable to the executive director indicating the location of any 100-year flood plain which may exist within the property boundary or surrounding area.

(B) Legal description. A legal description of the storage facility and the volume and page number of the deed record, or if platted property, the book and page number of the plat record of only that acreage encompassed in the application.

(C) Property owner affidavit. A statement from the property owner shall be submitted on a form provided by the executive director; and shall be witnessed and notarized. The form shall include:

(i) the legal description of the site;

(ii) 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 site;

(iii) acknowledgment that the owner has a responsibility to file in the county deed records an affidavit to the public advising that the land has been used for a tire storage facility, at the time as the site actually begins operating; and

(iv) acknowledgment that the site owner or operator and the State of Texas shall have access to the property during the active life and for a period of not less than five years after closure for the purpose of inspection and maintenance.

(D) Fire marshal approval. The fire marshal with jurisdiction over the facility location shall approve the fire protection system. A letter from the fire marshal shall be included in the application stating that the fire marshal has reviewed and approved the fire protection aspects of the application as well as the design of the all-weather roads to accommodate fire fighting vehicles. The fire marshal shall sign and date the Site Layout Plan.

(10) Engineering information includes the following.

(A) Site layout plan. The site layout plan shall include:

(i) location of storage areas;

(ii) location of fire lanes and fire control facilities;

(iii) security fencing, gates and gatehouse, site entrance and access roads and fire lanes in accordance with §330.811(c) and (d) of this title (relating to Design Requirements for Scrap Tire Storage Site);

(iv) location of buildings; and

(v) location and description of processing equipment.

(B) Drainage plan. A drainage plan showing drainage flow throughout the scrap tire storage site area, locations of streams and any other important drainage feature of the facility. Calculations shall be presented to show that normal drainage patterns will not be significantly altered. If the executive director determines that significant alteration will occur, the owner/operator shall design and provide additional surface drainage controls which shall be designed and provided to mitigate the effects of the altered watershed, as required by the executive director.

(C) Fire plan. The fire plan and all revisions shall be maintained at the site, with copies provided to all local fire departments and other emergency response teams, and shall include guidance or instruction on the following:

(i) roles to be assumed by on-site personnel (example: fire-fighting coordinator, equipment custodian, hose operator, etc.) in the event of a fire, duty stations, and procedures to be followed by these persons;

(ii) arrangements agreed to by local fire departments, police departments, hospitals, contractors, nearby businesses and industries that can be called for assistance, and state and local emergency response teams. In this regard, a letter from each of these entities shall be included in the fire plan, which letters shall acknowledge receipt of a copy of the fire plan, and agreement to participate as stated in the fire plan.

(iii) names, addresses, and telephone numbers of these emergency response teams (fire, police, medical, etc.) that are to be included in the plan. The fire plan must include a map of the general area of the site that shows the site location, the location of the emergency response teams included in the plan (fire stations, police stations, hospitals, etc.). The plan shall also include the best route for these emergency response teams to take from their location to the site location.

(iv) names, addresses, and telephone numbers of all site employees that are qualified to act as emergency coordinator(s) (this list must be kept up to date, and where more than one person is listed one must be designated as primary coordinator and the others as alternates);

(v) a list of all emergency equipment at the facility (fire extinguishers, protective clothing items, hoses, pumps, axes, shovels, detention ponds, water storage tanks, fire hydrants, signal and alarm system equipment, decontamination equipment, etc.), a copy of the Site Layout Plan (to be posted at several prominent locations on the site as well as included in the fire plan) drawing that clearly marks the location of these items as well as personnel assembly points and evacuation routes from the site and from buildings on the site, and a narrative description of where these items are kept or located on site as well as a description of how the items are used (if applicable) and their capabilities;

(vi) an evacuation procedure for facility personnel where there is a possibility that evacuation could be necessary, evacuation routes, alternate routes, and signals to be used by the emergency coordinator(s) for the various necessary procedures; and

(vii) information about any insurance held by the company that would cover fire damage, loss, and cleanup.

(D) Cost estimate for closure. The applicant shall submit a cost estimate for closure costs in accordance with §330.821 of this title (relating to Closure Cost Estimate for Financial Assurance).

(E) Site operating plan. The Site Operating Plan shall include information to provide specific guidance and instructions for the management and operation of a scrap tire storage site and should include:

(i) information on security, facility access control, the hours and days during which tire-hauling vehicles will be admitted, traffic control and safety;

(ii) sequence of the development of the scrap tire storage site such as utilization of storage areas, drainage features, firewater storage ponds, trenches, and buildings;

(iii) information on control of loading and unloading of used or scrap tires or tire pieces within designated areas, so as to minimize operational problems at the storage facility;

(iv) fire prevention and control plans, and special training requirements for fire-fighting personnel that may be called for assistance;

(v) vector control procedures for any type of vector that may be found at the scrap tire storage site;

(vi) a procedure for removal of any waste material that is not a used or scrap tire or tire piece to a disposal facility permitted by the commission. This procedure must include the means to remove this illegally deposited waste material. In all cases, such waste shall be removed from the storage area immediately and placed in suitable collection bins, or shall be returned to the transporter's vehicle and removed from the scrap tire storage site. Collection bins must be emptied at least weekly, depending on the amount and type of unauthorized waste. The equipment necessary to meet this objective shall be specified in the design requirements and shall be on site and operable during operating hours;

(vii) the name of the facility employee who is designated by the owner or operator to inspect each load of used or scrap tires or tire pieces that is delivered to the scrap tire storage site. The employee shall have the authority and responsibility to reject unauthorized or improperly manifested loads. The employee shall also be authorized to have unauthorized materials removed by the transporter, assess appropriate disposal fees, and have any unauthorized material removed by on-site personnel;

(viii) a procedure whereby the required transporter manifest, the daily log and other required documents shall be maintained at the scrap tire storage site for a period of three

years and be made available for inspection by the executive director or authorized agents or employees of local governments having jurisdiction to inspect the storage facility;

(ix) dust and mud control measures for access roads, fire lanes, and storage areas within the scrap tire storage site;

(x) posting of signs and enforcement of scrap tire storage site rules;

(xi) procedures for wet-weather operations;

(xii) preventive maintenance procedures for all storage areas, tire processing equipment, fire lanes, fire control devices, drainage facilities, access roads, buildings, and other structures on the scrap tire storage site in use during the active operating period of the scrap tire storage site. A schedule shall be established for periodic inspection of all equipment and facilities to determine if unsatisfactory conditions exist; and

(xiii) incorporation of other instructions as necessary to ensure that the scrap tire storage site personnel comply with all of the operational standards for the facility.

(11) The applicant seeking registration or amended registration for a scrap tire storage site shall submit evidence of financial responsibility in conformance with §330.821 of this title.

(c) Application processing. If an application for registration or amended registration of a scrap tire storage site is received that is not administratively or technically complete, the executive director shall notify the applicant of the deficiencies within 30 working days. If the additional information is not received within 60 days of the date of receipt of the deficiency notice, the executive director may return the incomplete application to the applicant, which shall result in forfeiture of the application review fee. The executive director may extend the response time to a maximum of 270 days upon sufficient proof from the applicant within 60 days of the receipt of the deficiency note that an adequate response cannot be submitted within 60 days. If, however, the applicant does not submit an administratively and technically complete application or sufficient proof of inability within the time frames indicated, the application may be considered withdrawn without prejudice.

(d) Registration expiration. A scrap tire storage site registration shall expire 60 months from the date of issuance. A scrap tire storage site registration is transferable contingent upon executive director approval. A change in the federal tax identification number will constitute a change of ownership. Registrations shall be renewed prior to the expiration date. Applications for renewal shall be submitted at least 60 days prior to the expiration date of the scrap tire storage site registration. Failure to timely file an application for renewal shall result in automatic expiration of the registration.

**§330.811. Design Requirements for Scrap Tire Storage Site.**

(a) A scrap tire storage site shall be designed so that the health, welfare and safety of operators, transporters, and others who may utilize the site are maintained.

(b) A registered scrap tire storage site may store scrap tires or tire pieces using outdoor or indoor tire piles or enclosed and lockable containers, or a combination of any of the aforementioned methods. Registered scrap tire storage sites shall be limited to a maximum of three piles of whole used or scrap tires on the ground.

(1) Tire piles consisting of scrap tires or tire pieces shall be no greater than 15 feet in height, nor shall the pile cover an area greater than 8,000 square feet. Existing storage sites with variances to the 8,000 square foot pile size limit may maintain the approved pile size if approved in writing by the local fire marshal in the fire plan under the current registration. Approval from the executive director and the local fire marshal will be required to maintain existing pile sizes greater than 8,000 square feet with renewal or amended application requests.

(2) Scrap tires or tire pieces may be stored in any enclosed building or other type of covered enclosure. Where applicable, local fire prevention codes must be met and appropriate precautions taken. Indoor storage piles or bins shall not exceed 12,000 cubic feet with a 10-foot aisle space between piles or bins.

(3) Scrap tires or tire pieces may be stored in trailers provided the trailer is totally enclosed and lockable.

(c) There shall be a minimum separation of 40 feet between outdoor piles consisting of scrap tires or tire pieces. This 40-foot space shall be designated as a fire lane that totally encircles the tire piles and shall be an all-weather road. Provisions shall be made for all-weather access from publicly-owned roadways to the scrap tire storage site, and from the entrance of the site to unloading and storage areas used during wet weather. The design (a cross-section), location, maintenance, and all-weather serviceability of interior access roads/fire lanes shall be addressed in the overall facility design and in the Site Operating Plan, and shall be indicated on the Site Layout Plan with appropriate design notes. At a minimum, these roadways shall have minimum 25-foot turning radii, shall be capable of accommodating firefighting vehicles during wet weather, and shall meet applicable local requirements and specifications. An estimate shall be provided of the number, size, and maximum weight of vehicles expected to use the site daily. The open space between buildings and outdoor tire piles consisting of scrap tires or tire pieces shall be a minimum of 40 feet; kept open at all times and maintained free of rubbish, equipment, tires, or other materials. In the event that a variance for supersize piles is approved by the executive director, the minimum fire lane separation shall be at least 40 feet. Upon coordination with the local fire marshal, the distance may be increased, as necessary, to protect human health and safety. Storage sites registered before January 1, 1998 may maintain setbacks less than 40 feet under the current registration if approved in writing by the local fire marshal in the fire plan.

(d) Outdoor piles consisting of scrap tires or tire pieces and entire buildings used to store scrap tires or tire pieces shall not be within 40 feet of the property line or easements of the scrap tire storage site. This setback line shall be kept open at all times and maintained free of rubbish, equipment, tires, or other materials. The executive director may grant a variance to the 40-foot property line or easement if the setback line meets the other applicable requirements of this subchapter and the applicant provides a written statement to the executive director from the local fire marshal that the distance that is the subject of the variance is adequate for fire fighting purposes. In the event that a variance for supersize piles is approved by the executive director, the minimum setback from property lines or easements will be 40 feet. Storage sites registered before January 1, 1998 may maintain setbacks less than 40 feet under the current registration if approved in writing by the local fire marshal in the fire plan.

(e) Scrap tires shall be split, quartered, or shredded within 90 days from the date of delivery to the scrap tire storage site. The executive director may grant a variance from this requirement if the executive director finds that circumstances warrant the exception. Off-the-road tires that are used on heavy machinery, including earthmovers, loader/dozers, graders, agricultural machinery and mining equipment are exempt from this requirement. Truck tires shall not be classified as off-the-road tires and thus are not exempt from this requirement. Appropriate vector controls shall be used at a frequency based upon type and size of piles, weather conditions and other applicable local ordinances.

(f) Access to the facility shall be controlled to prevent unauthorized activities. The facility shall be completely fenced with a gate that is locked when the facility is closed. A scrap tire storage site shall be enclosed by a chain-link type security fence at least six feet in height.

(g) The scrap tire storage site shall have an adequate fire protection system using fire hydrants or a firewater storage pond or tank at the facility. The capacity of a firewater storage pond or tank shall be of sufficient size for firefighting purposes and shall be in conformance with all local and state fire code requirements.

(h) The scrap tire storage site shall have large capacity dry chemical fire extinguishers located in strategically-placed enclosures throughout the entire site, equally spaced within the facility to provide quick access from any location within the facility. The minimum number of fire extinguishers or fire hydrants for each scrap tire storage site shall be one per acre.

(i) If necessary, suitable drainage structures or features shall be provided to divert the flow of rainfall runoff or other uncontaminated surface water within the scrap tire storage site to a location off-site.

(j) Each site shall conspicuously display at the entrance a sign at least 1 ½ feet by 2 ½ feet in size with clear, legible letters stating the name of the scrap tire storage site using the words "scrap tire site," the commission registration number, and operating hours.

(k) A scrap tire storage site located within a designated 100-year floodplain area shall be designed with adequate environmental protection. The owner/operator shall demonstrate that the tire storage area will not restrict the flow of the 100-year flood, reduce temporary water storage capacity of the floodplain, or result in a washout of tires, tire pieces or other material so as to pose a hazard to human health and the environment.

(l) The scrap tire storage site shall be designed in accordance with all local building codes, fire codes, and other applicable local codes.

**§330.812. Scrap Tire Storage Site Record Keeping.**

(a) General requirements.

(1) The owner/operator shall maintain on site at all times: a copy of the registration application with all supporting data, including the approved scrap tire storage site layout plan; the approved scrap tire storage site engineering information; a copy of the latest approved closure cost estimate and a copy of the current financial assurance mechanism, as filed with the commission; and a copy of the commission's current rules. The facility supervisor shall be knowledgeable of current

commission rules; the contents of the approved scrap tire storage site application; and the approved scrap tire storage site in relation to the operational requirements.

(2) All drawings or other sheets prepared for revisions to a scrap tire storage site layout plan or other previously approved documents, which may be required by this subchapter, shall be submitted in triplicate.

(b) Daily log. Persons that store used or scrap tires or tire pieces under this subchapter shall maintain a record of each individual delivery and removal. The record shall be in the form of a daily log or other similar documentation approved by the executive director. The daily log shall include, at a minimum, the:

- (1) name and commission registration number of the scrap tire storage site;
- (2) physical address of the scrap tire storage site;
- (3) number of used or scrap tires or tire pieces received at the scrap tire storage site;
- (4) number of used or scrap tires or tire pieces, removed from the scrap tire storage site (for disposal, resale, recycling, reuse or energy recovery);

(5) specific location in the scrap tire storage site (i.e., tire pile number, bin number, building number, etc.) where used or scrap tires or tire pieces are delivered or removed (for disposal, resale, recycling, reuse or energy recovery);

(6) description of specific events or occurrences at the scrap tire storage site relating to routine maintenance, spraying for vectors, observations of vectors, evidence of vectors, and fire or theft or other similar events or occurrences;

(7) number of used or scrap tires being held for resale, adjustments or other purposes;

(8) name and signature of facility representative acknowledging truth and accuracy of the daily log; and

(9) the name, address, telephone number, and date of the individual or company delivering or removing the used or scrap tires or tire pieces to or from the scrap tire storage site.

(c) Manifests. The scrap tire storage site operator shall retain all manifests received from a scrap tire facility or scrap tire transporter for used or scrap tires or tire pieces delivered to or removed from the scrap tire storage site. The scrap tire storage site shall ensure that the top original of the five-part manifest is returned to the generator completely filled out within 60 days of the date and time of

collection as indicated in Section 1 of the manifest form. The scrap tire storage site shall follow the requirements in §330.808 of this title (relating to Manifest System).

(d) Annual report. Scrap tire storage site owners or operators shall report their recycling, reuse, and energy recovery activities to the executive director. The annual report shall be prepared on a form provided by the executive director, and at a minimum the following information shall be required in the report:

(1) the name, physical address, mailing address, county and telephone number of the scrap tire storage site;

(2) the name, physical address, mailing address, county and telephone number of partners, corporate officers, and directors;

(3) a list of facilities where the scrap tire storage site owners or operators currently deliver used or scrap tires or tire pieces. Each scrap tire recycling or energy recovery facility listed shall include the following information:

(A) phone number of company and responsible person;

(B) physical address and mailing address of the scrap tire facility;

(C) detailed description of process to recycle, reuse or recover the energy from the used or scrap tires or tire pieces;

(D) exact quantities, by month, (in number of tires or weight of scrap tires or tire pieces) that the scrap tire storage site owner or operator delivered to the scrap tire facility.

(e) Local ordinances. Where local ordinances require controls or records more stringent than the requirements of this subchapter, the scrap tire storage site owner or operator shall use those criteria to satisfy the commission's requirements.

**§330.813. Scrap Tire Facility Requirements.**

(a) Applicability. This section applies to owners or operators of facilities that process, conduct energy recovery or recycle used or scrap tires or tire pieces.

(b) Storage site registration requirement. The applicant shall obtain a scrap tire storage site registration in accordance with §330.810 of this title (relating to Scrap Tire Storage Site Registration) if the applicant seeking registration for a scrap tire facility:

(1) intends to have more than a 30 calendar day supply of tires at the facility site; or

(2) is solely a scrap tire processing facility with no recycling or energy recovery conducted on-site and intends to store in excess of 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in trailers.

(c) Scrap tire facility registration requirements. Scrap tire facilities shall register their operation with the executive director in accordance with §330.805 of this title (relating to Registration Requirements) before starting operations. An application for registration shall be made on a form provided by the executive director upon request. In addition to the General Registration requirements, the following registration information must be provided to the executive director.

(1) Persons that process, conduct energy recovery or recycle used or scrap tires or tire pieces shall submit an application for a registration number from the executive director for the operation of the scrap tire facility.

(2) The application for registration shall be prepared and signed by the applicant. The application shall identify the use of the tires (e.g., the product to be made and the end use market), and shall include information necessary for the executive director to make an evaluation of the proposed operation.

(3) The application for registration of a scrap tire facility shall be submitted as one original and two copies to the executive director with all supporting data also submitted in triplicate unless otherwise directed by the executive director.

(4) Data presented in support of an initial or renewal application for a scrap tire facility shall consist of the following information:

(A) an application form provided by the executive director and location map(s) pursuant to §330.810 of this title;

(B) the maximum amount of tires (in pounds) that will be on the scrap tire facility at any given time;

(C) the amount of tires necessary to provide a 30 calendar day raw material supply for the proposed recycling process;

(D) the storage method (piles on the ground, piles inside a building or enclosure, or totally enclosed and lockable containers that are locked during non-operational hours);

(E) the product to be manufactured and the end use market;

(F) a property owner affidavit on a form provided by the executive director pursuant to §330.810 of this title; and

(G) a list of all other applicable federal, state, and local permits and/or registrations with the associated numbers;

(5) Persons that conduct energy recovery shall obtain all other applicable authorizations (i.e., permits and/or registrations) necessary for conducting tire related activities before submitting an application for registration as a scrap tire facility.

(d) General requirements.

(1) Where local ordinances require controls and records more stringent than the requirements of this subchapter, scrap tire facility operators shall use those criteria to satisfy commission requirements under this section.

(2) Stockpiles of used or scrap tires or tire pieces at the processing location that are awaiting splitting, quartering, shredding, processing or recycling shall be monitored for vector control and appropriate vector control measures shall be applied when needed, but in no event less than once every two weeks.

(3) If a scrap tire facility does not intend to provide its own fire fighting personnel or system, the facility shall make arrangements with public or private emergency response personnel that are capable of complying with applicable fire and building codes. In addition, the scrap tire energy recovery facility shall provide a letter from the fire marshal within whose jurisdiction the scrap tire energy recovery facility is located stating that the fire marshal has reviewed and approved the fire protection system.

(4) The owner or operator of the scrap tire facility shall operate the vehicles and equipment to prevent nuisances or disturbances to adjacent landowners.

(5) A scrap tire facility operator shall submit to the executive director an annual summary of facility activities from January 1 through December 31 of each calendar year, showing the number and type of scrap tires received, amount by weight of tires shredded, processed, burned for energy recovery or recycled, and the amount by weight of tire pieces removed from the facility. If the tire pieces were delivered to an end user, the annual report shall include the name of the end user, type of end user and the date of delivery to the end user. The annual report shall be submitted no later than March 1 of the year following the end of the reporting period. The report shall be prepared on a form provided by the executive director.

**§330.814. Requirements for a Scrap Tire Transportation Facility.**

Any person storing tires for periods longer than 30 calendar days at transportation facilities such as marine terminals, rail yards or trucking facilities, shall register the facility with the executive director on a form provided by the executive director and comply with all applicable requirements in §330.805 of this title (relating to Registration Requirements).

**§330.815. Tire Monofill Permit Required.**

(a) In accordance with §330.4(a) of this title (relating to Permit Required), no person may cause, suffer, allow, or permit the underground disposal or placement of tires or tire pieces into a tire monofill unless that activity is authorized by a permit from the commission. No person may begin physical construction of a tire monofill without first having submitted a permit application in accordance with §§330.50-330.65 of this title (relating to Permit Procedures) and received a permit from the commission.

(b) A separate permit is not required for the underground disposal or placement of tires or tire pieces into a tire monofill if the underground disposal or placement occurs within the permit boundary at a permitted municipal solid waste landfill site. Such disposal or placement shall be conducted only as authorized by the approved site development plan, or by a permit modification or amendment, as appropriate.

**§330.816. Land Reclamation Projects Using Tires (LRPUT).**

(a) Any person or entity intending to initiate a LRPOT shall notify the executive director in writing of the intent to fill land by means of a LRPOT. Owners/operators of LRPOTs are required to provide information to the executive director as part of the notification document as described in paragraph (1) of this subsection. Approval in writing by the executive director (authorization to proceed) is required before the reclamation project may be initiated. The executive director may withhold authorization to proceed if the information submitted is not deemed to be complete. The executive director shall have 60 days to review the notification documents for completeness. The executive director may request additional information if the executive director determines that the notification submittal does not address all applicable requirements of this subchapter. The following information shall be submitted in the notification document or attachments thereto.

(1) The owner/operator of the LRPOT shall disclose in the notification the location of the project on a state highway map, United States Geological Survey map or similar, and provide a legal description of the property. The general location on the site where fill activities will take place shall be shown on one or more of these maps;

(2) A property owner's affidavit shall be submitted at the time of notification of intent to initiate a LRPOT and shall include the following:

(A) legal description of the property on which the LRPOT will occur; and

(B) acknowledgment that the owner has a responsibility to file with the county deed records an affidavit to the public advising that a reclamation project utilizing tire pieces exists on the site, and providing details about the location of the filled area within the property boundaries, areal extent of the fill project, coordinates or survey data, and the approximate volume or weight of tires which were used as fill, at such time as the fill project has been completed;

(3) The approximate volume of tire pieces proposed to be placed below ground, or the equivalent number of whole tires, and the approximate size and depth of the depression or borrow area to be filled shall be disclosed in the notification document;

(4) The approximate period of time during which the project will be conducted shall be disclosed, with estimated start and finish dates;

(5) The method of placement and commingling of the tire shreds to achieve a mix of tire pieces with the inert fill material in a proportion no greater than 50% of tire material by volume.

(6) A statement signed and sealed by a professional engineer licensed to practice in Texas shall be submitted in the notification to the executive director to certify that the LRPUR is designed in a manner that will comply the following standards.

(A) The LRPUT shall not cause a discharge of solid waste or pollutants adjacent to or into the waters of the state, including ground water, that is in violation of the requirements of the Texas Water Code, §26.121;

(B) The LRPUT shall not adversely affect human health, public safety or the environment, either during fill operations or after the reclamation project is complete; and

(C) Tire or tire pieces shall not be placed below ground in a manner that constitutes disposal as defined in Texas Health and Safety Code §361.003(7);

(7) An affidavit signed by the property owner shall be submitted certifying that:

(A) the borrow area, hole or disturbed land area existed before the project; was excavated for another purpose; and was not excavated for the burial of tire pieces;

(B) the LRPUT will be completed in a manner that will comply with all regulations set forth in this subchapter and any other rules of the commission or any other local, state or federal agency which apply; and

(C) the local fire marshal has been notified of the tire placement or fill activity.

(8) An affidavit signed by the operator shall be submitted certifying that he or she is familiar with the application and all supporting data; is aware of all commitments represented in the notification; is familiar with all pertinent requirements in these regulations; and agrees to develop and operate the project in accordance with the application, applicable local and state regulations, and any special provisions that may be imposed by the executive director.

(9) The owner or operator shall mail a copy of the notification documents and attachments to the appropriate mayor and county judge if the proposed project is to be located within the corporate limits or extraterritorial jurisdiction of a city; or the appropriate county judge if the proposed project is to be located within an unincorporated area of a county; and the appropriate regional council of government. Proof of mailing shall be provided in the form of return receipts for registered mail.

(10) Upon the filing of the notification documents, the facility owner or operator shall provide notice to the general public by means of a notice by publication and a notice by mail. Each notice shall specify both the name, affiliation, address, and telephone number of the applicant and of the commission employee who may be reached to obtain more information about the LRPOT project. The notices shall specify that the notification documents have been provided to the county judge and that they are available for review by interested parties. The applicant shall publish notice in the county in which the facility is located, and in adjacent counties. The notice shall be published once a week for three weeks. The applicant should attempt to obtain publication in a Sunday edition of a newspaper.

The notice by certified mail, return receipt requested, shall be sent to all adjacent landowners and all owners of property within 500 feet of the boundary of the project; the health authorities of the city and county in which the project will be located, if applicable; and the appropriate state senator and representative for the area encompassing the project.

(b) Undisturbed land shall not be excavated for the purpose of filling the same land with a mixture of tires and debris or soil. Any borrow area, hole or other disturbed land area to be used for a LRPOT must have existed before the project, and it must have been excavated or soil removed for a purpose other than for the burial of tire pieces.

(c) The LRPOT shall not result in a public nuisance.

(d) The owner or operator of the LRPOT shall notify the local fire marshal or fire department serving the area of the tire placement or fill activity.

(e) All tires used to fill land shall be split, quartered or shredded. Whole tires shall not be placed below ground.

(f) The owner and operator of the LRPOT shall comply with all applicable local ordinances, including any public safety, or zoning and land use laws.

(g) Shredded, split or quartered tires placed below ground shall be mixed in a proportion no greater than approximately 50% by volume with inert material acceptable for filling land. If greater than 50% of tire pieces by volume are placed below ground, the site is considered a tire monofill and is subject to §330.815 of this title (relating to Tire Monofill Permit Required).

(h) Tire pieces shall be placed no closer than 18 inches to the final grade or ground surface. A soil cover unadulterated with tire pieces shall make up at least the upper 18 inches of the reclamation project.

(i) The owner or operator of the LRPOT shall register as a scrap tire facility if a shredding operation is conducted on site for processing tires.

(j) The owner or operator of the LRPOT shall register as a scrap tire storage site under §330.810 of this title (relating to Scrap Tire Storage Site Registration) if:

(1) operations requiring storage of more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or more than 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers would qualify the site as a registered tire storage site under §330.810 of this title; and

(2) the construction of the LRPUR extends beyond 90 days from the date of delivery of tires or tire pieces to the site.

(k) The executive director shall issue an identifying number at the time the approval letter for the LRPUR is issued. This identifying number shall be referenced in any correspondence relating to a particular LRPUR for which such a number is issued.

(l) A person may provide the commission with written comments on any notification of a LRPUR project. The executive director shall review any written comments when they are received within 30 days of mailing the notice. The written information received will be utilized by the executive director in determining what action to take on the application for a LRPUR.

(m) Following completion of all fill activities for the LRPUR, the owner or operator shall submit to the executive director, for review and approval, a documented certification signed by a registered professional engineer verifying that the project has been completed in accordance with this subchapter, the notification documents, and all attachments. Once approved, this certification shall be placed in the file.

**§330.817. Special Authorization Priority Enforcement List (SAPEL).**

(a) SAPEL.

(1) General. The SAPEL consists of scrap tires generated in specially designated counties or regions that are identified by the executive director as areas which are not receiving adequate collection service and that pose a threat to public health and safety or the environment.

(A) The executive director may designate collection entities as necessary to ensure continuous and adequate collection of SAPEL tires.

(B) The executive director may impose certain conditions on the SAPEL tire collection activities of designated collection entities as necessary to minimize disruption of activities at the generator locations and any other actions consistent with this subsection that are necessary to carry out the purposes of this section.

(C) Implementation of this section is not intended to impair or reduce existing generator collection in areas of the state containing SAPEL tires if adequate collection service is currently provided.

(2) Relationship to priority enforcement list (PEL). Unless otherwise provided by the executive director, the requirements in §330.818 of this title (relating to Priority Enforcement List (PEL) Program) do not apply to the SAPEL or SAPEL process.

(3) Generator responsibility. A generator desiring to have tires located at his site listed on the SAPEL shall cooperate fully with executive director instructions. A generator shall make his site available for access by designated collection entities for SAPEL tire collection. Failure to comply may result in tires at that site being ineligible for listing on the SAPEL.

(b) SAPEL contract.

(1) The executive director may contract with designated collection entities as necessary to ensure adequate collection of SAPEL tires.

(2) As part of the SAPEL contract, a designated collection entity may be required to comply with the following:

(A) for entities currently providing scrap tire collection, proof that their participation in the SAPEL contract process shall not impair or reduce their existing generator collection routes;

(B) attempt to the maximum extent possible to deliver SAPEL tires to an end user;

(C) special manifesting and reporting requirements;

(D) provide proof of ability to ensure adequate collection service for sites containing SAPEL tires; and

(E) any other requirements as necessary which are consistent with this section, and which will facilitate cleanup of SAPEL tires and protect human health, safety, and the environment.

**§330.818. Priority Enforcement List (PEL) Program.**

(a) PEL program.

(1) Applicability. This section applies to the creation and maintenance of the PEL and the identification of illegal scrap tire sites, and the determination of a Potentially Responsible Party (PRP).

(2) PEL procurement. The executive director may issue contracts to procure cleanups for the removal of tires from such sites through a competitive bid process conducted in accordance with the provisions of the State Purchasing and General Services Act (Article 601b, Vernon's Civil Texas Statutes) applicable to contract for services. The executive director may elect not to enter into contracts under this section. If no reasonable bids are submitted under the procurement process for the cleanup of PEL sites, or at the executive director's discretion, the executive director may rebid the PEL sites.

(b) PEL.

(1) The PEL shall be a list, maintained by the executive director, of piles of scrap tires or tire pieces in excess of 500 and defined as illegal scrap tire sites identified before December 31, 1997 and classified by the executive director. This list shall be used by the executive director for awarding site cleanups to successful contract bidders. The scrap tires or tire pieces obtained from the PEL sites are eligible for payment according to contract guidelines.

(2) The executive director may, on an as needed basis, and with notice, recontract or execute additional contracts for any PEL site identified and contracted in the state.

(3) Members of the commission, employees or agents of the commission, and authorized scrap tire facilities or their subcontractors are entitled to enter any public or private property at any reasonable time to inspect, investigate or remediate any condition related to illegal dumping of scrap tires.

(4) An authorized contractor or subcontractor is entitled to enter property only at the executive director's direction. The executive director shall give notice of intent to enter private property for those purposes by certified mail to the last known address indicated in the current county property records at least ten days before a commission member, commission employee or agent, or authorized contractor or subcontractor enters the property. A commission member, commission

employee or agent, or authorized contractor or subcontractor who, acting under this subsection, enters private property shall:

(A) observe the establishment's rules concerning safety, internal security, and fire protection; and

(B) if the property has management in residence, make a reasonable attempt to notify the management or person in charge of the entry and exhibit credentials.

(5) Authorized contractors and their subcontractors shall not be considered agents of the state and are solely responsible for their own actions and actions of their agents.

(6) Once a PEL site has been cleaned up, property owners shall not be eligible for future cleanup assistance as a result of further tire deposition on the owners' property.

(c) PEL scrap tire site cleanup contract.

(1) Authorized scrap tire facilities that intend to receive payment shall enter into a PEL scrap tire site cleanup contract as a guarantee of job performance.

(2) Should the authorized facility's registration to utilize scrap tires or tire pieces be suspended or revoked by the executive director pursuant to §330.805 of this title (relating to Registration Requirements), then the PEL sites remaining in the PEL Scrap Tire Site Cleanup Contract shall be rebid.

(d) Authority of commission personnel.

(1) The contractor shall report on the status of the cleanup activities at the PEL site to the executive director in the time frame and manner requested.

(2) The executive director shall have the authority to suspend cleanup activities at a PEL site following a determination of whether the conditions and/or activities at the PEL site or other circumstances warrant the temporary suspension of cleanup activities to ensure the protection of public health and safety or the environment.

(3) The executive director may undertake immediate remediation of a site if, after investigation, the executive director finds:

(A) that there exists a situation caused by the illegal dumping of scrap tires that is causing or may cause imminent and substantial endangerment to the public health and safety or the environment; and

(B) the immediacy of the situation makes it prejudicial to the public interest to delay action until an administrative order can be issued to PRPs or until a judgment can be entered in an appeal of an administrative order.

(4) If a person ordered to eliminate an imminent and substantial danger to the public health and safety or the environment has failed to do so within the time limits specified in the order or any extension of time approved by the executive director, the executive director may implement a remedial program for the site.

(5) The commission or executive director may seek to bring suit against a PRP to recover reasonable expenses incurred in undertaking immediate removal of tires or in implementing a remedial action order. For purposes of this subchapter, the following three criteria shall be used to determine whether a person is a PRP.

(A) The person must be the property owner of record, the site operator or the depositor of the scrap tires on the site;

(B) The person must have benefitted financially from the disposition of the scrap tires on the site; and

(C) The person must be financially capable of paying all or part of the costs of the cleanup as determined by the commission.

(6) The commission or executive director shall seek to file the suit to recover costs not later than one year after the date removal or remedial measures are completed.

(7) The commission or executive director, in lieu of bringing suit to recover costs incurred under this subchapter, may seek to file a lien against the property on which the site is located. The lien shall state the name of the owner of the property, the amount owed, and the legal description of the property. The lien arises and attaches on the date the lien is filed in the real property records of the county in which the property is located. The lien is subordinate to the rights of prior bona fide purchasers or lienholders of the property.

**§330.819. Public Notice of Intent to Operate.**

(a) Scrap tire storage sites that are registered with the executive director shall publish notice in the county where they intend to store used or scrap tires or tire pieces before beginning operation. Notice shall be published in a newspaper of general circulation. Subject to executive director approval, a variance to the public notice requirement may be requested provided that similar notice has been published within the previous 12-month period and that the notice was associated with activities under the jurisdiction of this subchapter.

(b) Scrap tire facilities that are registered with the executive director and have submitted an application amendment to request a variance from the 8,000 square feet pile size shall publish notice of intent to increase the pile size in accordance with this section.

(c) The notice of intent published by the scrap tire storage site owner shall contain at a minimum the following information:

- (1) the facility registration number;
- (2) the name under which the facility registration number was issued;
- (3) the permanent street address and telephone number of the facility;
- (4) a brief statement explaining the utilization activities the facility intends to perform at the location;
- (5) where the tires intended for utilization or already utilized will be stored, if different from the actual facility site; and
- (6) the number of tire piles planned for the storage facility and the square footage of the largest pile planned.

(d) The public notice of intent to operate shall identify the Texas Natural Resource Conservation Commission as the state agency regulating this activity.

(e) The public notice of intent shall be published at least 30 days before beginning activities. The public notice of intent shall be published for a period of 10 days continuously. In counties where no daily newspaper is published, the notice shall be published at least once each week for three consecutive weeks.

**§330.820. Motion for Reconsideration.**

A person affected by a registration under this chapter may file a Motion for Reconsideration pursuant to §50.39 of this title (relating to Motion for Reconsideration), notwithstanding §50.31 of this title (relating to Purpose and Applicability).

**§330.821. Closure Cost Estimate for Financial Assurance.**

(a) As part of a facility's registration application, an owner or operator of a scrap tire storage site must prepare a written estimate, certified by a professional engineer, in current dollars, of the cost of hiring a third party to close the facility(ies). The closure cost for scrap tire storage sites is determined by the sum of paragraphs (1) and (2) of this subsection:

(1) The estimated cost for a third party to transport and dispose of the maximum site capacity of used or scrap tires and tire pieces as depicted by the site layout plan. The estimate shall include equipment and operator time for loading tires and disposal costs.

(2) The estimated cost for a third party to complete cleanup of the site of any and all debris, as well as dismantling any equipment used in the processing of whole tires into shreds or used to recycle whole tires or shredded tires into manufactured products, securing the site, and preventing access to the equipment or removing it from the site to a location acceptable to the executive director; or the amount of \$3,000, whichever is greater.

(b) The closure cost estimate must equal the cost of closing the facility based on the maximum number of whole tires stored at the facility, the maximum volume of tire pieces, and disabling any equipment as disclosed in the facility's registration application. The executive director shall evaluate and determine the amount for which evidence of financial assurance is required. The closure cost estimate provided by the owner or operator may be amended by the executive director. In some cases, the closure cost estimate may not be sufficient which means that the owner or operator remains responsible for the entire costs to close the site.

(c) Any amendment application shall include a recalculation of the closure cost estimate based on any requested volume increases. Facilities shall not increase the volume of whole tires or tire pieces generated from out of state and stored at the facility until the registration amendment has been approved

by the executive director. Only upon approval of the executive director will the amended registration closure cost estimate be the basis for determining the amount of financial assurance required.

(d) The quantities of scrap tires reported on the registration application form and used in the calculation of financial assurance shall be obtained from the site layout plan volumes by using the following conversion factors:

(1) a typical whole tire shall be considered to occupy four cubic feet unless an exact count of all whole tires is to be maintained by an operator and shall be considered to weigh 20 pounds; and

(2) a cubic yard of tire shreds or pieces shall be considered to weigh no more than 950 pounds; however, other verifiable data may be used if accepted and approved by the executive director.

(e) The calculated capacity of a site as calculated for closure may not be exceeded without the submission and approval of an amended registration application specifically including, but not limited to, new site layout plans to substantiate the revised capacity and new closure calculations based upon the depicted volumetric capacity converted to weights, posting of the revised financial assurance and written approval for the amended registration. The owner or operator is also responsible for submitting a registration amendment to revise the closure cost estimate whenever requested to do so by the executive director. Registration amendments with revised closure cost estimates shall be submitted to

the executive director within 15 days of the executive director's written request to revise the closure cost estimate.

(f) The owner or operator must keep at the facility during the operating life of the facility a copy of the latest approved closure cost estimate and a copy of the current financial assurance mechanism.

(g) Financial assurance required under this section shall be provided in accordance with §37.3001 of this title (relating to Applicability) and §37.3011 of this title (relating to Financial Assurance Requirements for Scrap Tire Sites).

(h) Closure will begin when:

(1) the executive director deems the facility abandoned; or

(2) the registration expires, is terminated, or revoked or a new or renewal registration is denied; or

(3) closure is ordered by the Texas Natural Resource Conservation Commission or a United States District Court or other court of competent jurisdiction.

(i) Following a determination that the owner or operator has failed to perform closure in accordance with the registration requirements when required to do so or when closure begins under the circumstances outlined in subsection (h) of this section, the executive director may terminate or revoke the registration and draw on the financial assurance funds.