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TCEQ’s New Recycling Rules Now In Effect
by Sam Ballard

The Texas Commission on Environmental Quality’s (“TCEQ”) new Recycling Rule Package recently went into effect, on July 2, 2020. TxSWANA filed comments in support of the new rules with requests for clarification, and the TCEQ amended the rules in response.

The new rules require non-exempt governmental entities to do the following:

Establish a program for the separation and collection of all recyclable materials generated by the entity’s operations;

Provide procedures for collecting and storing recyclable materials, containers for recyclable materials, and procedures for making contractual or other arrangements with buyers of recyclable materials;

Evaluate the amount of recyclable material recycled and modify the recycling program as necessary to ensure that all recyclable materials are effectively and practicably recycled; and

Establish educational and incentive programs to encourage maximum employee participation.

These requirements have been codified in Chapter 361 of the Texas Health & Safety Code since 1991. The TCEQ recently issued these new rules to administer the statutory requirements, following the passage of SB 1376 last legislative session. SB 1376 amended Texas Health & Safety Code §§ 361.425 and 361.426, adding exemptions from the statutory requirements. The requirements apply to “governmental entities,” which are broadly defined as a “state agency, state court or judicial agency, a university system or institution of higher education, a county, municipality, school district, or special district.” Likewise, “recyclable material” is broadly defined as “[a] material generated by the entity’s operations, including aluminum, steel containers, aseptic packaging and polycoated paperboard cartons, high-grade office paper, and corrugated cardboard.” However, there are three types of potential exemptions under the rules:

1. 30 Texas Administrative Code § 328.203(a) - This is an exemption to the entire subchapter, but is only available to certain small school districts and municipalities.

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The Lone Star

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Visit www.swana.org
for a membership application.
I hope this President’s message, my last, finds you, your families, and your employees in good health. As the final date of my two-year term as President rapidly approaches, TxSWANA members are already in the process of electing new Executive board members. Soon the organization will have a new President to lead us through the next couple of years as we face current and future challenges. I am confident that the new President and executive board members are up to the challenge and I offer the my support as we move forward.

Typically, at this time of year, I would reflect on our annual events TxE-O, SWANApalooza, and the upcoming WasteCon. This year however, the focus worldwide has largely been about understanding and employing mitigation strategies and techniques to minimize both the spread and the impacts of the deadly 2019 Corona Virus. To that end, both the state and international Road E-O’s were cancelled, and it was decided that SWANApalooza would move forward although as a virtual event and not in person. By next month we will know how SWANA intends to roll out WasteCon. Whether it is live, virtual, or a hybrid of those options, it will be a great opportunity for all of us to see how others are preparing and weathering the challenges being presented by Covid19. This year’s theme, which was decided well before the pandemic was a thing, is “Embracing Disruption”. The most appropriate and prophetic conference theme I have ever seen.

This is also the time of the year when many of us in the public sector will be presenting our budgets for next fiscal year to our policy makers. This task will be more difficult than in year past as we have been constrained during the last legislative session by a 3.5% tax rate cap while figuring out how to continue our operations with increasing costs associated with the pandemic. One need only read the headlines to understand the impact the virus has had upon our organizations. Public and private sector entities are announcing layoffs, furloughs, and other cost saving measures in order to weather the pandemic. Through all this our employees have been there, doing what we ask of them. These essential front-line workers continue to provide the services people expect even as they too have responsibilities away from the job supporting their families and keeping them safe. Let us, as leaders in this industry, do everything we can to supply them with the personal protective equipment they need so that they can concentrate on the task at hand and not be overly concerned about their working conditions.

In closing, I would be remiss if I didn’t call attention to the race and social justice issues that have been highlighted across the nation over the past few months. The senseless death of George Floyd represents a much-needed call to action. My final request as President of this great organization is simple. Going forward, let’s advocate for our employees of color, and members of any disenfranchised group, who are fighting for rights that many of us already have. No one is asking for a handout, only to be treated with the same dignity and respect that is shown to others. It is time for us to initiate those difficult conversations about race. We must commit to listen and learn from other points of view and to better understand the experiences of others. It is this dialogue that will allow us to see the similarities we all have in common and to gain an understanding of what life is like for those that may not look like us. Sun Tzu, the Chinese general, military strategist, writer, and philosopher, is quoted as saying, “In the midst of chaos, there is also opportunity”. The chaos is here, let’s take this opportunity to make life better for our employees.

Thanks for all of your support and be safe!

Sincerely,

Richard McHale
2. 30 Texas Administrative Code § 328.203(b) - This is an exemption allowing the governmental entity to exclude one or more recyclable materials (as defined above) from its program if recycling for that material is not available through the entity’s solid waste provider, or recycling that material would create a hardship.

3. 30 Texas Administrative Code § 328.203(c) - This is an exemption from the entire subchapter based on hardship, although we expect that TCEQ may be reluctant to issue broad exemptions under this rule.

There is no formal process yet in place for requesting any of these three exemptions, but TCEQ has stated that governmental entities may make a self-determination of whether an exemption applies, and document the basis for that determination in the event of an investigation. What creates a hardship is loosely defined, and will be considered by TCEQ on a case-by-case basis.

More specifically, if a governmental entity wants an exemption under 30 Texas Administrative Code § 328.203(b) (to exclude one or more recyclable materials from the entity’s recycling program), then the burden will fall on the governmental entity in an enforcement context to show that it qualifies for the exemption. For example, if the entity decides to exclude some type of material from its recycling program, then the entity would need to document the reasons why the exemption applies and keep a record of this self-determination. The TCEQ has not provided any separate guidance on what would constitute adequate documentation of this self-determination.

In addition, the catch-all hardship exemption found under 30 Texas Administrative Code § 328.203(c) provides that an entity can request “additional consideration from the commission if compliance with this subchapter would create a hardship.” Because this would allow for an exemption such that entities would not be required to establish a recycling program at all, we believe that the TCEQ will be reluctant to grant such a broad and permanent exemption, especially given that an entity’s hardship may change over time in response to market conditions and other factors.

The enforcement of these rules will likely arise in one of two contexts. First, the TCEQ could evaluate recycling compliance as a secondary component of an unrelated inspection. Second, enforcement could come up in response to a citizen complaint. The rules do not establish a separate enforcement program, so enforcement would likely fall under the agency’s existing default penalty policy, which ranges from $50 - $25,000 per violation per day, depending on a number of factors.

If you have any specific questions on how these rules apply to your organization, or how to best comply with the rules, you should consult with your consultant or legal counsel. Please be on the lookout for further developments and visit https://www.lglawfirm.com/news/ for more information. TCEQ is also currently developing a webpage dedicated to these new rules that will be made available to the public.

Sam Ballard is an associate in Lloyd Gosselink Rochelle & Townsend, P.C.’s Air and Waste Practice Group. Please feel free to reach out to Sam with questions about TCEQ’s new recycling rules or other regulatory matters at sballard@lglawfirm.com or 512-322-5825.

If you have any questions concerning legislative issues or would like additional information concerning the firm’s legislative tracking and monitoring services or legislative consulting services, please contact Ty Embrey at (512) 322-5829 or tembrey@lglawfirm.com.
Heil of Texas

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RESULTS YOU CAN BE PROUD OF

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follow us & stay informed
Howdy TxSWANA Members! It is my great honor to be able to represent this state and each of you as the current SWANA President! I hope this message finds you safe and healthy both at home and in your organizations. This year so far has proven to be very challenging and has tasked all of us with finding creative ways to get our work done – whether it is the location we are working from, the volume of work to do or the added safety precautions we are taking. The Covid-19 has also had a significant impact on our Association – both at the national level and the state level. Nationally, we had to make to the change from hosting SWANAPalooza in Atlanta to conducting the industry’s first ever virtual conference. This was the first of many “firsts” to come. When these changes are made, the decision has you – the member – at the core of the decision. If you have had a chance to read my message in the July, I Am SWANA Newsletter, you read that I am focused on ensuring that SWANA is THE ASSOCIATION for ALL solid waste professionals. The work to get involved and build or create professional relationships often begins at the Chapter level. This is where I cut my teeth on serving the industry and learning from some of the best and brightest in the solid waste profession. My request of you as a member of SWANA and TxSWANA is that you engage in our chapter and the association. When more of our membership participates in our programs or events, we can improve our overall offerings because we learn from your involvement and input. As a longtime member of TxSWANA and the TxSWANA Board, I know that we are always looking for new ideas and how we can better serve you. As President, it is my desire to expand the voices we hear. I hope to serve you well and I want your input and feedback – get involved!
During a recent TxSWANA Board of Directors meeting, the TxSWANA Scholarship committee recommended, and the TxSWANA Board of Directors approved the following individuals for Scholarships. Congratulations to each !!!

Type I - Graduating High School Seniors

Mr. Noah Ledat
Sponsor-Jodie Ledat
University Park, TX

Ms. Clarissa Yamaguchi
Sponsor-Jesus Yamaguchi
El Paso, TX

Type III - Current College, Solid Waste Management Focus

Mr. Morteza Boroun
SWANA Student Member
Arlington, TX

Mr. Ketah Shah
SWANA Student Member
Arlington, TX
During a recent TxSWANA Board of Directors meeting, the TxSWANA Scholarship committee recommended, and the TxSWANA Board of Directors approved the following individuals for Scholarships. Congratulations to each !!!

Type II - Current College, Non-Solid Waste Management Focus

Mr. Ryan Benick
Sponsor-Aaron Benick
Boise, ID

Ms. Selan Ledat
Sponsor-Jodie Ledat
University Park, TX

Ms. Anne Mayfield
Sponsor-Jeff Mayfield
Wylie, TX

Ms. Katie Mayfield
Sponsor-Jeff Mayfield
Wylie, TX

Ms. Isabella Pasternak
Sponsor-Scott Pasternak
Austin, TX

Mr. Ryan Rawson
SWANA Student Member
Austin, TX

Mr. Benjamin White
Sponsor - Wealthia White
Houston, TX

Ms. Gariel White
Sponsor - Wealthia White
Houston, TX
So where does safety start? Any organization in operation today assumes a certain amount of risk, and that is the first question any safety manager asks. Whether it’s a collections, transfer or disposal operation in any capacity – in the field or in the office, there is always some amount of danger or risk involved. Now clearly, driving a truck has a lot more inherent risk than many tasks in an administrative setting. Even so, one goal every organization should have is to ensure employee safety. Safety in many operations can look like an OSHA poster on a wall or a monthly safety video. Some organizations take more proactive steps to prevent accidents and other dangers by utilizing safety technologies and more intensive educational safety programs.

**Where Does Safety Start?**

The question this paper poses is where does safety start? Does it start with the safety manager, or with new employees making a vow to be safe? Does it start with OSHA? Well, the short answer is no. Safety undoubtedly starts at the top. The people leading the organization are the ones most responsible for its safety. It's simple. In the Private Sector, the decisions presidents, CEO's and CFO's make determine how safe a company will be. In the Public Sector, our organizations have various tables of organization, but for us, it is our City Exec's, Solid Waste Directors, Assistant Directors and all those following in various leadership positions. These are the people who decide how much money and attention their organization should devote to being safe. Each facet of the organizations operations will be the determining factor. An active operation of staff on the road will differ from the functions of the administrative component. Still, it should devote resources to the safety of its employees. This can look like a security system in the office, fire drills and informative literature on how to handle common dangerous situations. The operation's leadership team might invest in driver training, PPE, safety technologies and appropriate selection procedures to ensure the hiring of safe drivers.

**Safety is Not Just a Poster**

Organizations must ingrain safety into its culture to truly reduce the greatest amount of risk. Typically, the senior leadership establishes its culture which is the main reason why safety starts at the top. Culture includes the norms, rituals, shared beliefs and values of the organization. Once established, culture is very difficult to change. If safety isn’t initially an area of focus, then it usually later falls to HR, a safety or risk manager to deal with. For some organizations, that might be okay. For others, who every day assume a great amount of risk, it's not enough.

**Safety Starts at the Top**

What many organizational leaders may not know or undervalue is how much is modeled...
after their behavior and attitude. If a leadership team doesn’t really buy into a new safety initiative then their direct subordinates won’t either. This will fall down the chain until it gets to the front-line employees. Even if a Director agrees to invest more resources in a safety program and signs a few PO’s, it’s not enough. If that leader doesn’t follow up or isn’t interested in its effects, the program won’t be as impactful as it could be.

Follow the Leader

Employees want to know that what they’re doing matters and that their organization cares about them. They often follow the lead of their supervisors. Once there is leadership buy-in there will be organization-wide buy in and employees will feel like they are important to the company. This will result in employees putting more effort into their work. At this point, a organization will truly be able to improve its safety practices, reduce risk and increase the safety of its employees as well as the general public’s.

Safety is More Than Just a Word.

It’s more than just a poster on a wall, a video, or a monthly meeting. Safety, by definition, is freedom from risk and it’s something every organization should focus on. While some don’t have as much to worry about as others, the point remains that to be a safe organization and have a safety culture, everything needs to start at the top. The leadership team needs to head the charge and prove its commitment to safety and all its initiatives.

Safety Starts with you is brought to you by your Safety Management Resource Team (S.M.A.R.T)— If you have any related solid waste safety question feel free to reach out to Ryan Rawson at ryan.rawson@austintexas.gov, Derek Mebane at derek.mebane@Houstontx.gov, or David Vartian at dvartian@uptexas.org.

Use S.M.A.R.T.

We’re part of the Solution!
MEMBERSHIP UPDATE
We Welcome the Following New Members (through Aug. 4, 2020)

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<thead>
<tr>
<th>Jorge Avitia</th>
<th>City of El Paso, TX</th>
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<tr>
<td>Michael Y. Carrillo</td>
<td>Eunice, NM</td>
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<td>Banning Lary</td>
<td>LNC</td>
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<td>Neenah Marie</td>
<td>San Antonio, TX</td>
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<tr>
<td>Duane McDonald</td>
<td>FCC Environmental Services</td>
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<tr>
<td>Rachel A. Meidl</td>
<td>Baker Institute for Public Policy</td>
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<tr>
<td>Edward Orozco</td>
<td>City of West University Place, TX</td>
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<tr>
<td>Alejandra Palacios</td>
<td>Broomfield, CO</td>
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<td>Sarah Renee Perkins</td>
<td>City of Irving, TX</td>
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<tr>
<td>Macarena San Martin Ruiz</td>
<td>University of Stuttgart, Germany</td>
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<tr>
<td>Travis Switzer</td>
<td>City of Irving, TX</td>
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<tr>
<td>Renee Tyler</td>
<td>Bond Equipment</td>
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<td>Tammie Williamson</td>
<td>City of Austin, TX</td>
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Calendar of Events

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<tr>
<th>BOARD OF DIRECTORS MEETINGS</th>
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<td>Aug. 21</td>
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2020 SWANA International Road-e-o
Oct. 10, 2020
CANCELLED

2020 SWANA WasteCon
Dec. 7-11
Grapevine, TX